

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

ACACIA RESEARCH CORP

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No.)

Filed by the Registrant T
Filed by a Party other than the Registrant £

Check the appropriate box:

T

Preliminary Proxy Statement

£ Confidential, for Use of the Commission (as permitted by Rule 14a-6(e)(2))
 £

Definitive Proxy Statement

£ Definitive Additional Materials
 £ Soliciting Material Pursuant to Rule 14a-12

ACACIA RESEARCH CORPORATION

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

T No fee required.
 £ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

- (1) Title of each class of securities to which transaction applies:
- (2) Aggregate number of securities to which transaction applies:
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
- (5) Total fee paid:

£ Fee paid previously with preliminary materials:

£ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- (1) Amount Previously Paid:
 - (2) Form, Schedule or Registration Statement No.:
 - (3) Filing Party:
 - (4) Date Filed:
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Dear Stockholders,

We are very pleased to invite you to the 2019 Annual Meeting (the "Annual Meeting") of Acacia Research Corporation ("Acacia" or the "Company"). Prior to last year's annual meeting of stockholders, we had expressed grave concern about the governance, strategy and management of the Company. In the course of our proxy solicitation we had met with almost all stockholders of Acacia, and once we were elected on June 14, 2018, we began making the comprehensive changes that were required. This Proxy Statement represents the culmination of that work.

From an operational perspective, our immediate priorities were to secure the assets of the Company, including the remaining revenue opportunities in the legacy portfolio. We were very pleased to recruit Marc Booth as Chief Intellectual Property Officer, who in the last five months of 2018 was able to generate \$62 million in licensing revenue so that we were able to end the year with \$165 million of cash and marketable securities.

On the governance front, our goal has been to identify and recruit a sound Board of Directors as the foundation for rebuilding the Company. We are immensely proud of the Board of Directors we have today. All of our directors are eminently qualified, completely independent and totally committed to the interests of the Company. They are now fully engaged in building a new management team and executing their capital allocation responsibilities.

Our new Board is committed to the highest standards of corporate governance. The first responsibility of directors is to represent stockholders, and our Board is fully committed to the highest level of accountability. Accordingly at this year's Annual Meeting, we are asking stockholders to approve a rapid declassification of the Board so that starting with next year's annual meeting our stockholders may elect the full Board annually to one year terms, and we request stockholder approval of the following comprehensive governance reforms and stockholder protections:

- **Declassification of the Board:** If approved by the requisite vote of stockholders, the Company's charter will be amended to begin declassifying the Board so that the two directors to be elected at the Annual Meeting will serve one-year terms and all members of the Board will stand for election at the 2020 Annual Meeting of Stockholders.
 - **Allow Stockholders to Call a Special Meeting:** If approved by the requisite vote of stockholders, the Company's charter will be amended to provide the holders of at least 25% of our outstanding common stock to call a special meeting of stockholders.
 - **Eliminate Supermajority Voting Standards for Certain Bylaw Amendments:** If approved by the requisite vote of stockholders, the Company's charter will be amended to replace the supermajority voting requirement for any actions of stockholders to amend provisions of our bylaws with a simple majority of the votes cast to the extent permitted under Delaware law.
 - **Protection of the Company's NOLs:** The Board has adopted a rights plan and approved a charter amendment, both to protect the significant long-term value of the Company's net operating losses ("NOLs") and related tax credits that it may use to offset taxable income in future years. If the rights plan is ratified by the stockholders and the protective charter amendment approved by the stockholders, the Company will be better positioned to preserve its NOLs and use them to reduce its future income tax liability. We are seeking the adoption of both the rights plan and the charter amendment to protect the NOLs because together the measures will better preserve our U.S. federal and state income tax NOLs totaling approximately \$222,860,808 and \$19,470,755 and our ability to use these NOLs than either measure could alone. Further, we believe the adoption of both protective measures is appropriate because they are limited in duration to no more than three years without a renewal or extension and the above improvements to our corporate governance counterbalance ensure that stockholders have many ways to hold our directors accountable.
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In addition, following a comprehensive review of the Company's governance practices, the Board is implementing a number of reforms designed to ensure that the Company's policies are aligned with stockholder interests and corporate governance best practices, including:

- **Director Election Governance Practices:** The Board is adopting a modification of the governance practices for director elections. The Company's Bylaws will provide that in an uncontested election, each director will be elected by a majority of the votes cast; provided that, if the election is contested, the directors will be elected by a plurality of the votes cast. In an uncontested election, if a nominee for director who is a director at the time of election does not receive the vote of at least the majority of the votes cast at any meeting for the election of directors at which a quorum is present, the director will promptly tender his or her resignation to the Board and remain a director until the Board appoints an individual to fill the office held by such director.
- **Allow Stockholders to Remove Directors With or Without Cause:** The Board is adopting an amendment to the Bylaws that will expand stockholders' right to remove directors so that directors may be removed with or without cause by the affirmative vote of a majority of the shares entitled to vote at the election of directors.
- **Changes to Stockholder Communication and Interaction:** The Board is adopting a Policy Statement on Corporate Communications to Investors and Media that facilitates better communications. This Policy Statement will set out guidelines for communicating with the stockholders and stakeholders of the Company as well as the media.
- **Approval of Anti-Hedging and Anti-Pledging Policy:** The Board is adopting an amendment to the Company's Insider Trading Policy that will prohibit executive officers, directors and employees from engaging in hedging transactions or pledging the Company's securities as collateral for loans.
- **Director Independence:** We are adopting Corporate Governance Guidelines that will require at least two-thirds of the Board be independent directors, as defined under the rules of the NASDAQ Stock Market. Our Corporate Governance Guidelines will include categorical standards of independence to assist the Board in making determinations regarding the independence of our directors. The NASDAQ rules and Rule 10A-3 under the Securities Exchange Act of 1934, as amended, include the additional requirement that members of the Audit Committee may not accept directly or indirectly any consulting, advisory or other compensatory fee from the Company other than their director compensation. The Corporate Governance Guidelines will also provide that when determining the independence of members of the Compensation Committee, the Board must consider all factors specifically relevant to determining whether a director has a relationship to the Company which is material to the director's ability to be independent from management in connection with Compensation Committee duties, including, but not limited to, consideration of the sources of compensation of Compensation Committee members, including any consulting, advisory or other compensatory fees paid by the Company, and whether any Compensation Committee member is affiliated with the Company or any of its subsidiaries or affiliates. Compliance by Audit Committee members and Compensation Committee members with these requirements is separately assessed by the Board.
- **Director Education:** We encourage director education-for example, we recently applied for two members of the Board to attend executive education programs in corporate governance. The Board also receives regular updates regarding new developments in corporate governance.
- **Board Role in Oversight of Risk Management:** The ultimate responsibility for risk oversight rests with the Board. The Board assesses major risks facing the Company and reviews options for their mitigation. Each Committee of the Board reviews the policies and practices developed and implemented by management to assess and manage risks relevant to the Committee's responsibilities, and reports to the Board about its deliberations. The Board's risk oversight function and responsibilities of each Board Committee are described beginning on page 9 of the Proxy Statement.

As representatives of your new Board of Directors, it is our pleasure to work closely with the other members of the Board who are similarly committed to our stockholders and providing effective oversight and guidance to management. We deeply value your support.

Very truly yours,

Clifford Press
Director

Alfred Tobia
Director

The attached Proxy Statement is dated n and is first being mailed on or about n.

If you have any questions or require any assistance with respect to voting your shares, please contact our proxy solicitor at the contact listed below:

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Saratoga Proxy Consulting LLC
520 8th Avenue, 14th Floor
New York, NY 10018
(212) 257-1311

Stockholders Call Toll Free at: (888) 368-0379
Banks & Brokers may call: (212) 257-1311
Email: info@saratogaproxy.com

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ACACIA RESEARCH CORPORATION
120 Newport Center Drive
Newport Beach, California 92660

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON n

TO OUR STOCKHOLDERS:

NOTICE IS HEREBY GIVEN that the 2019 Annual Meeting of Stockholders (the "Annual Meeting") of Acacia Research Corporation will be held on n, n, at n, local time, at n, for the following purposes, as more fully described in the Proxy Statement accompanying this Notice of Annual Meeting:

1. To elect two Class I directors to serve on our Board of Directors for a term of three years expiring upon the 2022 Annual Meeting of Stockholders or until their respective successors are duly elected and qualified, or, if Proposal No. 2 (as set forth in the Proxy Statement) is approved, to serve on our Board of Directors for a term of one year expiring upon the 2020 Annual Meeting of Stockholders;
2. To approve an amendment to the Amended and Restated Certificate of Incorporation to provide for a declassified Board of Directors such that all members of our Board of Directors shall be elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders;
3. To approve an amendment to the Amended and Restated Certificate of Incorporation to eliminate supermajority vote requirements for specified corporate actions;
4. To approve an amendment to the Amended and Restated Certificate of Incorporation to grant stockholders the right to call special meetings of the stockholders;
5. To approve an amendment to the Amended and Restated Certificate of Incorporation to implement certain transfer restrictions to preserve tax benefits associated with our net operating losses;
6. To ratify the adoption of our Tax Benefits Preservation Plan;
7. To ratify the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2019;
8. To approve, by advisory vote, the compensation of our named executive officers; and
9. To transact such other business as may properly come before the Annual Meeting or at any postponement or adjournment thereof.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE STOCKHOLDER MEETING TO BE HELD ON n: The Proxy Statement, enclosed proxy card and Annual Report on Form 10-K for the fiscal year ended December 31, 2018 are available at <http://proxymaterial.acaciaresearch.com>.

Our Board of Directors has established May 22, 2019 as the record date for the determination of stockholders entitled to notice of, and to vote at, the Annual Meeting and at any postponement or adjournment thereof. Only stockholders of record at the close of business on May 22, 2019 are entitled to receive notice of and to vote at the Annual Meeting and any adjournment or postponement thereof.

Your vote is very important. Whether or not you plan to attend the Annual Meeting, it is important that your shares be represented and voted at the Annual Meeting. Therefore, I urge you to complete, sign, date and promptly return the enclosed proxy card in the enclosed postage-paid envelope, even if you plan to attend the Annual Meeting. Returning your completed proxy will ensure your representation at the Annual Meeting. If you decide to attend the Annual Meeting and wish to change your proxy vote, you may do so automatically by voting in person at the Annual Meeting if your shares are held directly in your name as the stockholder of record.

Sincerely,

Marc W. Booth
Chief Intellectual Property Officer

Newport Beach, California
n

If you have any questions or require any assistance with respect to voting your shares, please contact our proxy solicitor at the contact listed below:

s a r a t o g a



Saratoga Proxy Consulting LLC
520 8th Avenue, 14th Floor
New York, NY 10018
(212) 257-1311

Stockholders Call Toll Free at: (888) 368-0379
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ACACIA RESEARCH CORPORATION
120 Newport Center Drive
Newport Beach, California 92660

PROXY STATEMENT
FOR THE ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON n

General

The enclosed proxy is solicited on behalf of the Board of Directors (the "Board") of Acacia Research Corporation (referred to herein as "we," "us," "our," "Acacia" and the "Company") for use at our 2019 Annual Meeting of Stockholders (the "Annual Meeting") to be held on n, n at n, local time, and at any adjournment or postponement thereof. The Annual Meeting will be held at n. Only stockholders of record at the close of business on May 22, 2019 are entitled to receive notice of and to vote at the Annual Meeting and any adjournment or postponement thereof. These proxy solicitation materials and our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, including audited financial statements, were mailed on or about n to all stockholders entitled to receive notice of and to vote at the Annual Meeting. In addition, these proxy solicitation materials, our Annual Report on Form 10-K and directions to attend the Annual Meeting, where you may vote in person, are available at <http://proxymaterial.acaciaresearch.com>.

Questions and Answers

The following are some commonly asked questions raised by our stockholders and answers to each of those questions.

1. What may I vote on at the Annual Meeting?

At the Annual Meeting, stockholders will consider and vote upon the following matters:

- **Proposal No. 1:** The election of two Class I directors to serve on our Board for a term of three years expiring upon the 2022 Annual Meeting of Stockholders or until their respective successors are duly elected and qualified, or, if Proposal No. 2 is approved, to serve on our Board of Directors for a term of one year expiring upon the 2020 Annual Meeting of Stockholders;
- **Proposal No. 2:** The approval of an amendment to the Amended and Restated Certificate of Incorporation to provide for a declassified Board of Directors such that all members of our Board of Directors shall be elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders;
- **Proposal No. 3:** The approval of an amendment to the Amended and Restated Certificate of Incorporation to eliminate supermajority vote requirements for specified corporate actions;
- **Proposal No. 4:** The approval of an amendment to the Amended and Restated Certificate of Incorporation to grant stockholders the right to call special meetings of the stockholders;
- **Proposal No. 5:** The approval of an amendment to the Amended and Restated Certificate of Incorporation to implement certain transfer restrictions to preserve tax benefits associated with our net operating losses;
- **Proposal No. 6:** The ratification of our 2019 Tax Benefits Preservation Plan;
- **Proposal No. 7:** The ratification of the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2019; and
- **Proposal No. 8:** The approval, by advisory vote, of the compensation of our named executive officers, as disclosed in this Proxy Statement;

Stockholders may also be asked to consider and vote upon such other matters as may properly come before the Annual Meeting or any adjournment or postponement thereof.

2. How does the Board of Directors recommend that I vote on the proposals?

The Board recommends that our stockholders vote "FOR" each of the proposals in this proxy by using the enclosed proxy card.

3. How can I vote my shares in person at the Annual Meeting?

Shares held directly in your name as the stockholder of record may be voted in person at the Annual Meeting. If you choose to vote in person, please bring proof of identification. Even if you plan to attend the Annual Meeting, we recommend that you submit a proxy with respect to the voting of your shares in advance as described below so that your vote will be counted if you later decide not to attend the Annual Meeting. Shares held in street name through a brokerage account or by a broker, bank, or other nominee may be voted in person by you only if you obtain a valid proxy from your broker, bank, or other nominee giving you the right to vote the shares.

4. How can I vote my shares without attending the Annual Meeting?

Whether you hold shares directly as the stockholder of record or beneficially in street name, you may vote by proxy or submit a voting instruction form without attending the Annual Meeting. If you hold your shares directly as the stockholder of record, you may submit your proxy by completing and mailing your proxy card. If you hold your shares beneficially in street name, please refer to the voting materials delivered to you by your broker, bank or other nominee for details.

Whether or not you plan to attend the meeting, it is important that your shares be represented and voted at the meeting. Therefore, we urge you to complete, sign, date and promptly return the enclosed proxy card in the enclosed postage-paid envelope. Returning your completed proxy will ensure your representation at the meeting. If you decide to attend the meeting and wish to change your proxy vote, you may do so automatically by voting in person at the meeting.

5. Can I change my vote or revoke my proxy?

If you are the stockholder of record, you may change your proxy instructions or revoke your proxy at any time before the Annual Meeting by: (1) notifying our Secretary in writing; (2) voting in person at the Annual Meeting; or (3) returning a later-dated proxy card. If your shares are held in a brokerage account by a broker, bank or other nominee, you should follow the instructions provided by your broker, bank or other nominee.

If you need assistance changing your proxy, please call our proxy solicitor, Saratoga Proxy Consulting LLC, toll free at (212) 257-1311 or stockholders can call toll free at (888) 368-0379.

6. Who will count the vote?

A representative of n will count the votes and a representative from n will act as the inspector of election.

7. What does it mean if I get more than one proxy card or voting instruction form?

If your shares are registered differently and are in more than one account, you will receive more than one proxy card or voting instruction form. Sign and return all proxy cards or voting instruction forms to ensure that all of your shares are voted. We encourage you to have all accounts registered in the same name and address (whenever possible). You can accomplish this by contacting our transfer agent, Computershare Trust Company, N.A., or if your shares are held in "street name," by contacting the broker, bank or other nominee holding your shares.

8. Who is entitled to vote at the Annual Meeting?

Only holders of record of our common stock as of the close of business on May 22, 2019, the record date established by the Board (the "Record Date"), are entitled to receive notice of and to vote at the Annual Meeting and any adjournments or postponements thereof.

9. How many shares am I entitled to vote?

You may vote all of the shares owned by you as of the close of business on the Record Date, and you are entitled to cast one vote per share of common stock held by you on the Record Date. These shares include shares that are held of record directly in your name, and held for you as the beneficial owner through a stockbroker, bank, or other nominee.

10. How many votes may be cast?

Each outstanding share of our common stock as of the Record Date will be entitled to one vote on all matters brought before the Annual Meeting. As of May 22, 2019, 50,064,281 shares of our common stock were issued and outstanding.

11. What is a “quorum” at the Annual Meeting?

The presence at the Annual Meeting, in person or by proxy, of the holders of a majority of the shares of our common stock issued and outstanding as of the close of business on the Record Date will constitute a “quorum.” Votes cast by proxy or voting instruction card or in person at the Annual Meeting will be tabulated by the Inspector of Elections appointed for the Annual Meeting who will determine whether or not a quorum is present. Abstentions and broker non-votes are each included in the determination of the number of shares present and voting for the purpose of determining whether a quorum is present.

12. What is the difference between holding shares as a stockholder of record and as a beneficial owner?

Most of our stockholders hold their shares beneficially through a broker, bank, or other nominee rather than directly in their own name. There are some distinctions between shares held of record and shares owned beneficially, specifically:

- *Shares held of record.* If your shares are registered directly in your name with our transfer agent, Computershare Trust Company, N.A, you are considered the stockholder of record with respect to those shares, and these proxy materials are being sent directly to you. As a stockholder of record, you have the right to grant your voting proxy directly to us or to vote in person at the Annual Meeting. We have enclosed a WHITE proxy card for you to use.
- *Shares owned beneficially.* If your shares are held in a stock brokerage account or by a broker, bank, or other nominee, you are considered the beneficial owner of shares held in street name, and these proxy materials are being forwarded to you by your broker, bank, or other nominee, which is considered the stockholder of record with respect to those shares. As a beneficial owner, you have the right to direct your broker, bank, or other nominee on how to vote the shares in your account, and you are also invited to attend the Annual Meeting. However, because you are not the stockholder of record, you may not vote these shares in person at the Annual Meeting unless you request and receive a valid proxy from your broker, bank, or other nominee. Please refer to the voting instructions you received from your broker, bank, or other nominee for instructions on the voting methods they offer.

13. What happens if I abstain?

When an eligible voter attends the Annual Meeting but decides not to vote, his, her or its decision not to vote is called an “abstention.” Properly executed proxy or voting instruction cards that are marked “abstain” or “withhold authority” on any proposal will be treated as abstentions for that proposal. We will treat abstentions as follows:

- abstention shares will be treated as not voting for purposes of determining the outcome on any proposal for which the minimum vote required for approval of the proposal is a plurality, majority or some other percentage of the votes actually cast, and thus will have no effect on the outcome; and
- abstention shares will have the same effect as votes “against” a proposal if the minimum vote required for approval of the proposal is a majority or some other percentage of (i) the shares present and entitled to vote, or (ii) all shares outstanding and entitled to vote.

14. How do you treat “broker non-votes”?

Broker non-votes occur when shares held by a broker, bank or other nominee in “street name” for a beneficial owner are not voted with respect to a particular proposal because the broker, bank or other nominee (i) does not receive voting instructions from the beneficial owner, and (ii) lacks discretionary authority to vote the shares with respect to a particular proposal.

A broker is entitled to vote shares held for a beneficial owner on “routine” matters, such as the ratification of the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2019, without instructions from the beneficial owner of those shares. However, absent instructions from the beneficial owner of such shares, a broker is not entitled to vote shares held for a beneficial owner on “non-routine” matters,

such as the election of directors, the amendment of our Amended and Restated Certificate of Incorporation, the advisory vote on the compensation of our named executive officers, and the ratification of our 2019 Tax Benefits Preservation Plan. Broker non-votes are counted for purposes of determining whether or not a quorum exists for the transaction of business, but will not affect the outcome of the voting on a proposal the passage of which requires the affirmative vote of a plurality, majority or some other percentage of (i) the votes cast or (ii) the votes present or represented by proxy and entitled to vote on that proposal at the Annual Meeting. Broker non-votes will have the same effect as a vote against a proposal the passage of which requires an affirmative vote of the holders of a majority or some other percentage of the outstanding shares entitled to vote on such proposal. Thus, if you do not give your broker specific voting instructions, your shares will not be voted on the "non-routine" matters described above.

15. What vote is required to approve each proposal?

Election of Directors: Proposal No. 1. In an uncontested election of directors, such as this election, each nominee for Class I director must be elected by the affirmative vote of the majority of the votes cast with respect to such director by the shares of common stock present in person or represented by proxy and entitled to vote. A "majority of votes cast" means that the number of votes "FOR" a director nominee must exceed the number of votes "AGAINST" that director nominee. If you are present at the Annual Meeting but do not vote for a particular nominee, or if you have given a proxy or voting instruction card and properly withheld authority to vote for a nominee, the shares withheld or not voted will not be counted as votes cast on such matter, although they will be counted for purposes of determining whether there was a quorum. Broker non-votes will not be taken into account in determining the election of directors.

Approval of an amendment to the Amended and Restated Certificate of Incorporation to provide for the declassification of the Board of Directors such that all members of our Board of Directors shall be elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders: Proposal No. 2. The approval of Proposal No. 2, regarding an amendment to the Amended and Restated Certificate of Incorporation requires the affirmative vote of a majority of the outstanding shares of our common stock. Abstentions and broker non-votes will have the same effect as votes against the proposal.

Approval of an amendment to the Amended and Restated Certificate of Incorporation to eliminate supermajority voting requirements applicable to specified corporate actions: Proposal No. 3. The approval of Proposal No. 3, regarding an amendment to the Amended and Restated Certificate of Incorporation requires the affirmative vote of a majority of the outstanding shares of our common stock. Abstentions and broker non-votes will have the same effect as votes against the proposal.

Approval of an amendment to the Amended and Restated Certificate of Incorporation to grant stockholders the right to call special meetings of the stockholders: Proposal No. 4. The approval of Proposal No. 4, regarding an amendment to the Amended and Restated Certificate of Incorporation requires the affirmative vote of a majority of the outstanding shares of our common stock. Abstentions and broker non-votes will have the same effect as votes against the proposal.

Approval of an amendment to the Amended and Restated Certificate of Incorporation to implement certain transfer restrictions to preserve tax benefits associated with our net operating losses: Proposal No. 5. The approval of Proposal No. 5, regarding an amendment to the Amended and Restated Certificate of Incorporation requires the affirmative vote of a majority of the outstanding shares of our common stock. Abstentions and broker non-votes will have the same effect as votes against the proposal.

Ratification of Our 2019 Tax Benefits Preservation Plan: Proposal No. 6. The approval of Proposal No. 6, regarding our Tax Benefits Preservation Plan, requires the affirmative vote of a majority of the outstanding shares of our common stock present in person or by proxy at the Annual Meeting and entitled to vote on the proposal. Abstentions will have the same effect as votes against this proposal. Broker non-votes will have no effect on this proposal.

Ratification of Independent Registered Public Accounting Firm: Proposal No. 7. The approval of Proposal No. 7, ratifying the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2019, requires the affirmative vote of a majority of the outstanding shares of our common stock present in person or by proxy at the Annual Meeting and entitled to vote on the proposal. Because the ratification of the independent registered public accounting firm is a routine matter, we do not anticipate receiving any broker non-votes for this proposal. Abstentions will have the same effect as votes against this proposal.

Advisory Vote on the Compensation of Our Named Executive Officers: Proposal No. 8. The approval of Proposal No. 8, regarding the compensation of our named executive officers, requires the affirmative vote of a majority of the outstanding shares of our common stock present in person or by proxy at the Annual Meeting and entitled to vote on the

proposal. Abstentions will have the same effect as votes against this proposal. Broker non-votes will have no effect on this proposal.

16. How will voting on any other business be conducted?

Although we do not know of any business to be considered at the Annual Meeting other than the proposals described in this Proxy Statement, if any other business is properly presented at the Annual Meeting, your signed proxy card gives authority to the proxy holders, Marc W. Booth, Clifford Press and Alfred V. Tobia, Jr., to vote on such matters at their discretion.

17. Who are the largest principal stockholders?

For information regarding holders of more than 5% of the outstanding shares of our common stock, see "Security Ownership of Certain Beneficial Owners and Management" beginning on page 38 of this Proxy Statement.

18. Who will bear the cost of this solicitation?

We will bear the entire cost of this solicitation. We will reimburse brokerage firms and other custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses incurred in sending proxies and proxy solicitation materials to our stockholders. Proxies may also be solicited in person, by telephone, or by facsimile by our directors, officers and certain of our regular employees, without additional compensation. We have retained Saratoga Proxy Consulting, LLC, a proxy solicitation firm, to perform various solicitation services. We will pay Saratoga Proxy Consulting, LLC a fee of \$20,000 plus phone and other related expenses, in connection with their solicitation services.

19. Where can I find the voting results of the Annual Meeting?

We will announce preliminary voting results at the Annual Meeting and will publish final results in a Current Report on Form 8-K that we expect to file with the SEC within four business days of the Annual Meeting. If final voting results are not available to us in time to file a Form 8-K with the SEC within four business days after the Annual Meeting, we intend to file a Form 8-K to disclose preliminary voting results and, within four business days after the final results are known, we will file an additional Form 8-K with the SEC to disclose the final voting results.

20. Who can answer my questions?

Your vote at this year's Annual Meeting is important, no matter how many or how few shares you own. Please sign and date the enclosed proxy card and return it in the enclosed postage-paid envelope promptly or vote by Internet or telephone. If you have any questions or require assistance in submitting a proxy for your shares, please call Saratoga Proxy Consulting, LLC, the proxy solicitation firm assisting us in the solicitation of proxies:

s a r a t o g a



Saratoga Proxy Consulting LLC
520 8th Avenue, 14th Floor
New York, NY 10018
(212) 257-1311

Stockholders Call Toll Free at: (888) 368-0379
Banks & Brokers may call: (212) 257-1311
Email: info@saratogaproxy.com

MATTERS TO BE CONSIDERED AT THE ANNUAL MEETING

PROPOSAL NO. 1:

ELECTION OF DIRECTORS

General

Our Bylaws provide that the number of directors shall be set by the Board, but in any case shall not be less than five and not more than nine. The Board has set the current number of directors at six. The Board is currently divided into three classes, with each class being as nearly equal in number of directors as possible. The term of a class expires, and their successors are elected for a term of three years, at each annual meeting of our stockholders.

The Board, on the recommendation of the Nominating and Governance Committee, has nominated Katharine Wolanyk and Isaac T. Kohlberg for election at the Annual Meeting to serve as the Class I directors for a term of office expiring at our 2022 Annual Meeting of Stockholders; provided, that if Proposal No. 2 is approved our Amended and Restated Certificate of Incorporation is amended to declassify the Board, Mr. Kohlberg and Ms. Wolanyk will serve as Class I directors for a term of office expiring at our 2020 Annual Meeting of Stockholders. Ms. Wolanyk and Mr. Kohlberg have agreed to serve on the Board if elected, and management has no reason to believe that either of Ms. Wolanyk or Mr. Kohlberg will be unavailable for service. If either Ms. Wolanyk or Mr. Kohlberg are unable or decline to serve as directors at the time of the Annual Meeting, the proxies will be voted for such other nominees as may be designated by the present Board.

Majority Vote Standard

Our Bylaws require that each director be elected by the affirmative vote of a majority of the votes cast with respect to such director in uncontested elections such as this one (the number of shares cast "for" a nominee's election exceeds the number of votes cast "against" that nominee). In a contested election, the standard for election of directors is the affirmative vote of a plurality of the votes cast. A contested election is one in which the Board has determined that the number of nominees exceeds the number of directors to be elected at the meeting.

In accordance with our Bylaws, a nominee who does not receive the affirmative vote of a majority of the votes cast shall tender a written offer to resign to the Board within five business days of the certification of the stockholder vote. The Nominating and Governance Committee shall promptly consider the resignation offer and recommend to the full Board whether to accept the resignation. The Board will act on the Nominating and Governance Committee's recommendation within 90 calendar days following certification of the stockholder vote. Thereafter, the Board will promptly disclose its decision whether to accept the director's resignation offer and the reasons for rejecting the resignation offer, if applicable, in a current report on Form 8-K to be filed with the SEC within four business days of the Board's determination. Any director who tenders his or her resignation pursuant to this provision shall not participate in the Nominating and Governance Committee recommendation or Board action regarding whether to accept the resignation offer.

Required Vote

If a quorum is present and voting, each nominee for Class I director for whom the number of shares cast "for" such nominee's election exceeds the number of votes cast "against" that nominee will be elected to the Board. This proposal is considered a non-routine matter under applicable rules. Accordingly, a broker, bank or other nominee may not vote without instructions on this matter, so there may be broker non-votes in connection with this proposal. Broker non-votes and shares withheld or not voted will not be taken into account in determining the election of directors, although they will be counted for purposes of determining whether there was a quorum.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE "FOR" EACH OF THE CLASS I NOMINEES NAMED HEREIN. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD'S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

The following table sets forth information as to the persons who currently serve as our directors.

Name	Age	Director Since	Positions with the Company
Maureen O'Connell*+ #	57	2019	Director
Clifford Press%	65	2018	Director
Alfred V. Tobia, Jr.%	54	2018	Director
Katharine Wolanyk*+ #	56	2019	Director
Isaac T. Kohlberg^	67	2019	Director
Luis E. Rinaldini*+ ^	64	2019	Director

* Member of the Audit Committee

+ Member of the Compensation Committee

^ Member of the Nominating and Governance Committee

% Member of the Investment Committee

Member of the Sub-Committee

Class I directors are to be elected at the Annual Meeting. The terms of our Class II directors expire at the 2020 Annual Meeting of Stockholders, and the terms of our Class III directors expire at the 2021 Annual Meeting of Stockholders. If Proposal 2 is approved by our stockholders at the Annual Meeting, our Class III directors, Messrs. Press and Tobia, have committed to resign so that they may be reappointed to the Board for a one-year term such that all directors would then stand for election at the 2020 Annual Meeting of Stockholders.

Biographical information regarding the nominees for election as a director and each other person whose term of office as a director will continue after the Annual Meeting is set forth below.

Information Regarding the Director Nominees (Class I)

Katharine Wolanyk has served as a director since January 2019. Ms. Wolanyk is a Managing Director at Burford Capital, LLC, where she leads the Chicago office as well as Burford's intellectual property ("IP") business. Ms. Wolanyk's career spans the business, legal and engineering arenas, with a particular focus in IP. She was named a World's Leading IP Strategist by Intellectual Asset Management (IAM) in 2015 through 2018, and writes and speaks frequently on IP issues. Prior to joining Burford, Ms. Wolanyk was President, Chief Legal Officer and a Board member of Sovereign Software, an enterprise software company whose patent portfolio has been licensed extensively in the software and Internet retailing industries. Ms. Wolanyk also was IP counsel to Terremark Worldwide, Inc., a publicly traded IT solutions firm, General Counsel of Data Return LLC, a managed hosting provider, Senior Vice President of corporate development at Divine, Inc., a publicly traded enterprise software company a corporate attorney at Latham & Watkins LLP, and a systems engineer at Hughes Aircraft Company. Ms. Wolanyk earned her JD from the University of Chicago Law School, and a BS in engineering from Michigan State University. She has served on the University of Chicago Law School Visiting Committee and on the Board of Managers of the YMCA of Metropolitan Chicago. We believe that Ms. Wolanyk's extensive business experience and IP expertise make her qualified to serve on the Board.

Isaac T. Kohlberg has served as a director since May 2019. Mr. Kohlberg has had a distinguished career protecting and commercializing IP for leading universities and research institutions. He currently is a Senior Associate Provost and Chief Technology Development Officer at Harvard University, where he is responsible for the strategic management and commercial development of all technologies and IP arising from Harvard's research enterprise. Mr. Kohlberg's role at Harvard University includes industry liaising and outreach, IP Management, business development, technology commercialization and the formation of startup companies and new ventures around Harvard technology platforms. In tandem, he is also responsible for generating, structuring, and negotiating research alliances and collaborations with industry and generating industry-sponsored research funding for Harvard faculty. Prior to joining Harvard in 2005, Mr. Kohlberg was the CEO of Tel Aviv University's Economic Corporation and head of Ramot, its technology transfer organization. Prior to his role at Ramot, Mr. Kohlberg held various roles at New York University ("NYU"), including Vice Provost, Vice President for Industrial Liaison (NYU's technology transfer program) and headed the Office of Science and Technology Administration at NYU School of Medicine. During his time at NYU, the institution entered into a major licensing agreement to develop Remicade, a humanized monoclonal antibody used in treatment of Crohn's Disease and other autoimmune diseases, which led to one of the largest royalty revenue streams generated by any university worldwide. Before joining NYU in 1989, Mr. Kohlberg was the CEO of YEDA, the commercial arm of the Weizmann Institute of Science in Israel. While at YEDA, Mr. Kohlberg negotiated and

concluded major royalty-bearing license agreements. A few examples are an agreement with Teva Pharmaceutical Industries Ltd regarding Copaxone, which Teva Pharmaceuticals markets as a proprietary treatment for relapsing/remitting multiple sclerosis, and an agreement with the broadcasting encryption company NDS Group. Mr. Kohlberg has served as a Director at Anchiano Therapeutics Ltd (TLV: ANCN, NASDAQ: ANCN), a pivotal-stage biopharmaceutical company, since 2017 and as a Director at Clal Biotechnology Industries Ltd. (TLV: CBI), a life sciences investment company, since 2015. Mr. Kohlberg received his M.B.A. from Institut Européen d'Administration des Affaires and LL.B. from Tel Aviv University. He also received a diploma in French culture and historical studies from the University of Strasbourg. We believe Mr. Kohlberg's long-term experience in IP commercialization and development makes him qualified to serve on the Board.

Directors with Terms Expiring in 2020 (Class II)

Maureen O'Connell has served as a director since January 2019. Prior to joining Acacia, Ms. O'Connell briefly provided consulting services to the Company from September 2018 to November 2018. Ms. O'Connell is a global business executive, CFO and board director recognized for significant value creation through strategic thinking and action at numerous public companies. She has held executive leadership and board positions in a variety of industries including media, education, digital, retail, technology, professional services, biotech, pharma, homebuilding, real estate and insurance. She has chaired the Audit Committee, served on the Transaction and Nominating Committees, and served as the designated financial expert for Fortune 500 and high growth public companies listed on NYSE and NASDAQ. In addition, Ms. O'Connell is a certified public accountant and has been in good standing since 1987. Ms. O'Connell is also recognized for her extensive M&A experience and her strength in operations and technology. Ms. O'Connell was appointed to the Harte Hanks (NYSE: HHS) Board in June 2018 and is a member of the Audit Committee and Compensation Committee of Harte Hanks. Ms. O'Connell served on the Board of Sucampo Pharmaceuticals Inc. (NASDAQ: SCMP), a fast growth biotech company, from 2013 to 2018. She played a key role in its sale to Mallinckrodt Plc for \$1.2 billion in February 2018. From 2007 to 2017, Ms. O'Connell has served as Executive Vice President, Chief Administrative Officer and Chief Financial Officer of Scholastic, Inc., a well-known publisher and distributor of children's books and a leading company in educational technology and children's media. From 2002 to 2007, Ms. O'Connell served on the Board of Beazer Homes (NYSE: BZH), a Fortune 500 homebuilder. Initially, Ms. O'Connell served on the Audit and Compensation Committees of Beazer Homes and in 2003 was named Audit Chair. We believe that Ms. O'Connell's financial expertise and extensive financial experience at public companies make her qualified to serve on the Board.

Luis E. Rinaldini has served as a director since May 2019. Mr. Rinaldini has been CEO of the merchant bank Groton Partners LLC since he founded the firm in 2003. His principal sectors of focus for his 38 years of investment banking have been in media, telecom, technology, pharmaceuticals and healthcare. At Groton Partners, Mr. Rinaldini has advised Royalty Pharma in over \$1.5 billion of recapitalization transactions and numerous royalty acquisitions, Bally Technologies in its \$6 billion sale to Scientific Games Corporation and AmBev S.A. in its \$20 billion merger with Interbrew S.A. From 2001 to 2002, he was Vice Chairman and Global Head of Telecom Mergers & Acquisitions at Credit Suisse First Boston, based in London. Mr. Rinaldini joined Credit Suisse First Boston from Lazard Frères & Co. LLC, where he served on the Executive Committee and was the Senior Managing Director in charge of the Telecom Group as well as the firm's Latin American practice. Mr. Rinaldini joined Lazard in 1980 and became a Managing Director in 1985. During his years at Lazard, Mr. Rinaldini led teams which completed a number of landmark transactions including the acquisitions of RCA Corporation by General Electric Company, RJR Nabisco, Inc. by Kohlberg Kravis Roberts & Co., MCI Communications Corp. by WorldCom, Inc., Ernst & Young Consulting by Capgemini SE, and the merger of Warner Communications, Inc. and Time Inc.. Mr. Rinaldini also directed capital-raising transactions of \$1 billion or more for each of Comcast Corporation, Equant, Time Warner Cable and Vivendi SA. Prior to Lazard, Mr. Rinaldini worked as an architect for four years in Philip Johnson's office and completed such notable projects in New York City as the renovation of Avery Fisher Hall in Lincoln Center and the ATT/Sony building at Madison Avenue and 55th Street. Mr. Rinaldini graduated cum laude from Princeton University in Civil Engineering in 1974 and received an MBA from Harvard Business School, (Baker Scholar) in 1980. We believe that Mr. Rinaldini's strong background in financial transactions and leadership experience make him qualified to serve on the Board.

Directors with Terms Expiring in 2021 (Class III)

Clifford Press has served as a director since June 2018. Mr. Press has been a Managing Member of OPP, LLC, and its predecessor firm, Oliver Press Partners, LLC, an investment advisory firm, since March 2005. From 1986 to March 2003, Mr. Press served as a General Partner of Hyde Park Holdings, Inc., a private equity investment firm that he co-founded. Mr. Press currently serves on the Boards of Directors of Drive Shack, Inc. (NYSE: DS), an operator of golf-related leisure and entertainment businesses, where he has served since February 2016 and Quantum Corporation (OTC: QMCO), a provider of data storage solutions, where he has served since April 2016. From October 2016 until June 2018 Mr. Press served as a director of Stewart Information Services Corporation (NYSE: STC), a real estate information, title insurance and transaction management company. From March 2008 to November 2009, Mr. Press served as a director of Coherent Inc. (NASDAQ:

COHR), a manufacturer of laser-based photonic products. From December 2011 until the company was acquired in February 2013, Mr. Press served as a director of SeaBright Holdings, Inc. (formerly NYSE: SBX), a specialty provider of multi-jurisdictional workers' compensation insurance. From 2001 to June 2011, Mr. Press served as a director of GM Network Ltd., a private holding company providing Internet-based digital currency services. Mr. Press received his MA degree from Oxford University and an MBA degree from Harvard Business School. We believe that Mr. Press's financial expertise and over 25 years of experience investing in a broad range of public and private companies, together with his extensive governance oriented public company board experience, makes him well qualified to serve on the Board.

Alfred V. Tobia, Jr. has served as a director since June 2018. Mr. Tobia is currently Chairman of the Board and Chairman of the Nomination and Governance Committee of Harte Hanks. Mr. Tobia is a co-Founder and Portfolio Manager for Sidus Investment Management, LLC and its affiliates, founded in 2000, in which capacity he oversees the management of the Sidus equity funds and provides analysis to the firm's credit fund. Mr. Tobia was previously a Senior Managing Director and Supervisory Analyst (1996 to 2000) within the data networking and telecommunication equipment sectors at Banc of America Securities (formerly Montgomery). From 1992 to 1996, he was a Senior Analyst at Wertheim Schroeder & Co., focusing on PC and entertainment software, data networking and special situations. Prior to that, Mr. Tobia was an analyst at Mabon Nugent & Co. (1986 to 1992), covering various sectors of technology. Mr. Tobia graduated in 1986 from Lafayette College with an AB in Engineering with a concentration in Computer Science. Mr. Tobia has extensive financial experience in both public and private companies and executive experience through the management of a small-cap investment fund. Mr. Tobia's background and insights provide valuable expertise in corporate finance, strategic planning, and capital and credit markets. We believe Mr. Tobia's extensive financial experience and his executive and management experience make him qualified to serve on the Board.

Director Independence

Our common stock is listed on The Nasdaq Global Select Market and, therefore, we are subject to the listing requirements of that market. The Board, with the assistance of outside counsel, reviews the professional relationships of potential and current directors, and has determined that Messrs. Kohberg and Rinaldini and Ms. O'Connell and Wolanyk, constituting a majority of our directors, are "independent" as defined in the Listing Rules of The Nasdaq Stock Market.

Board Leadership Structure

Our Bylaws provide the Board with flexibility to combine or separate the positions of Chairman and Chief Executive Officer in accordance with its determination that utilizing one or the other structure is in the best interests of our company. Currently, the positions of Chairman and Chief Executive Officer are separate, with Ms. O'Connell serving as our Chairman. The position of Chief Executive Officer is currently vacant. The Board, with assistance from management and a consultant, is currently conducting a search for CEO candidates.

The Board does not currently have a lead independent director. The Board has determined that this structure is the most effective leadership structure for our company at this time. The Board has determined that maintaining the independence of a majority of our directors helps maintain the Board's independent oversight of management. In addition, our Audit, Compensation and Nominating and Governance Committees, which oversee critical matters such as our accounting principles, financial reporting practices and system of disclosure controls and internal controls over financial reporting, our executive compensation program and the selection and evaluation of our directors and director nominees, each consist entirely of independent directors.

Risk Oversight

The Board is actively involved in the oversight of risks, including credit risk, liquidity risk and operational risk that could affect our business. The Board does not have a standing risk management committee, but administers this oversight function directly through the Board as a whole, as well as through committees of the Board. For example, the Audit Committee assists the Board in its risk oversight function by reviewing and discussing with management our accounting principles, financial reporting practices and system of disclosure controls and internal controls over financial reporting. The Nominating and Governance Committee assists the Board in its risk oversight function by periodically reviewing and discussing with management important corporate governance principles and practices and by considering risks related to our director nominee evaluation process. The Compensation Committee assists the Board in its risk oversight function by considering risks relating to the design of our executive compensation programs and arrangements. The full Board considers strategic risks and opportunities and receives reports from the committees regarding risk oversight in their areas of responsibility as necessary. We believe the Board leadership structure facilitates the division of risk management oversight responsibilities among the Board.

committees and enhances the Board's efficiency in fulfilling its oversight function with respect to different areas of our business risks and our risk mitigation practices.

Board Meetings and Committees

The Board held a total of twenty-six meetings and committees of the Board held a total of twelve meetings during the fiscal year ended December 31, 2018. During that period, no incumbent director attended fewer than 75% of the sum of the total number of meetings of the Board and the total number of meetings of all committees of the Board on which that director served. The Board has an Audit Committee, a Compensation Committee, a Nominating and Governance Committee, an Investment Committee, an IP Portfolio Committee and a Sub-Committee. The Board has adopted amended charters for the Audit Committee, the Compensation Committee and the Nominating and Governance Committee, each of which may be viewed on our website at www.acaciaresearch.com.

Audit Committee. The Audit Committee currently consists of Mr. Rinaldini and Mses. O'Connell and Wolanyk, each of whom is independent under the listing standards of the Nasdaq Stock Market. Ms. O'Connell currently serves as the Chairman of the Audit Committee. Frank E. Walsh, III served on the Audit Committee until March 30, 2018, when he stepped down from the committee. Joseph E. Davis and Paul Falzone were appointed to the Audit Committee on March 30, 2018 and April 18, 2018 respectively. Mr. Falzone served as the Audit Committee Chairman until his resignation as a director on July 25, 2018. Mr. Davis and Fred A. de Boom served as members of the Audit Committee until their resignation as directors on August 7, 2018. Mr. Press was appointed to the Audit Committee and as Chairman of the Audit Committee on July 31, 2018, Mr. Tobia was appointed to the Audit Committee on August 8, 2018, and C. Allen Bradley, Jr. served on the Audit Committee from August 14, 2018 until his resignation from the Board on May 8, 2019. On February 1, 2019, the Audit Committee was reorganized, with Messrs. Press and Tobia stepping down from the Audit Committee and on May 8, 2019 the Audit Committee was reorganized again with its current membership. The Audit Committee held four meetings during the fiscal year ended December 31, 2018.

The Audit Committee is responsible for retaining, evaluating and, if appropriate, recommending the termination of our independent registered public accounting firm and is primarily responsible for approving the services performed by our independent registered public accounting firm and for reviewing and evaluating our accounting principles, financial reporting practices and system of internal accounting controls. The Audit Committee is also responsible for maintaining communication between the Board and our independent registered public accounting firm.

The Board has determined that each of Mr. Rinaldini and Mses. O'Connell and Wolanyk is an "audit committee financial expert," as defined by Item 407(d)(5)(ii) of Regulation S-K.

Compensation Committee. The Compensation Committee currently consists of Mr. Rinaldini and Mses Wolanyk and O'Connell, each of whom is independent under the listing standards of the Nasdaq Stock Market. Mr. Rinaldini currently serves as the Chairman of the Compensation Committee. Mr. Walsh served on the Compensation Committee until he stepped down from the committee on February 12, 2018. Edward W. Frykman served as Vice Chairman of the Compensation Committee until his death on April 14, 2018. Mr. Falzone was appointed to the Compensation Committee on March 30, 2018, and Messrs. Falzone and de Boom served on the Compensation Committee until their resignation as directors on July 25, 2018 and August 7, 2018 respectively. Messrs. Press and Tobia were appointed to the Compensation Committee on August 8, 2018 and Mr. Bradley was appointed to the Compensation Committee on August 14, 2018. On February 1, 2019, the Compensation Committee was reorganized with its current membership, with Messrs. Allen, Press and Tobia stepping down from the committee. The Compensation Committee held one meeting during the fiscal year ended December 31, 2018.

Our executive compensation program is administered by the Compensation Committee. The Compensation Committee is responsible for approving the compensation package of each executive officer and recommending it to the Board as well as administering our equity compensation plans. In making decisions regarding executive compensation, the Compensation Committee considers many factors including recommendations from our compensation advisory firm, evaluation of our peer group, the input of our management and other directors. In addition, the Compensation Committee establishes compensation programs that do not encourage excessive risk taking by our named executive officers and we have determined that it is not reasonably likely that our compensation and benefit plans and policies would have a material adverse effect on our company.

For more information on the responsibilities and activities of the Compensation Committee, including the committee's processes for determining executive compensation, see "Executive Compensation and Related Information" beginning on page 41 of this Proxy Statement.

Nominating and Governance Committee. The Nominating and Governance Committee currently consists of Ms. Wolanyk and Messrs. Kohlberg and Rinaldini, each of whom is independent under the listing standards of the Nasdaq Stock Market. Ms. Wolanyk currently serves as the Chairman of the Nominating and Governance Committee. William S. Anderson was appointed Chairman of the Nominating and Governance Committee on March 30, 2018, and served on the committee until his resignation as a director on July 25, 2018. Mr. Frykman served on the Nominating the Governance Committee until his death on April 14, 2018. Messrs. Davis, de Boom, Falzone, Walsh and James F. Sanders served on the Nominating and Governance Committee until their director resignations, with the exception of Mr. Walsh, which occurred as follows: Mr. Falzone resigned on July 25, 2018, Messrs. Davis, de Boom and Sanders resigned on August 7, 2018. Mr. Walsh was not reelected as a director at our 2018 Annual Meeting. Mr. Bradley served on the Nominating and Governance Committee from August 14, 2018 until his resignation from the Board on May 8, 2019. The Nominating and Governance Committee held six meetings during the fiscal year ended December 31, 2018. The Nominating and Governance Committee recommended director nominees to the Board for election at the Annual Meeting. The charter for the Nominating and Governance Committee provides that, among its specific responsibilities, the Committee shall:

- Establish criteria and qualifications for Board membership, including standards for assessing independence;
- Identify and consider candidates, including those recommended by stockholders and others, to fill positions on the Board, and assess the contributions and independence of incumbent directors in determining whether to recommend them for reelection to the Board;
- Recommend to the Board candidates for election or reelection at each annual meeting of stockholders;
- Annually review our corporate governance processes, and our governance principles, including such issues as the Board's organization, membership terms, and the structure and frequency of Board meetings, and recommend appropriate changes to the Board;
- Administer our corporate Codes of Conduct and annually review and assess the adequacy of the corporate Codes of Conduct and recommend any proposed changes to the Board. Specifically, the Nominating and Governance Committee shall discuss with management its compliance with the corporate Codes of Conduct, including any insider and affiliated party transactions, and our procedures to monitor compliance with the corporate Codes of Conduct;
- Review periodically with our Chief Executive Officer and the Board, the succession plans relating to positions held by senior executives, and make recommendations to the Board regarding the selections of individuals to fill these positions;
- Oversee the continuing education of existing directors and the orientation of new directors;
- Monitor the functions of the Board and its committees, as set forth in their respective charters, and coordinate and oversee annual evaluations of the Board's performance and procedures, including an evaluation of individual directors, and of the Board's committees; and
- Assess annually the performance of the duties specified in the Nominating and Governance Committee Charter by the Nominating and Governance Committee and its individual members.

Investment Committee. The Investment Committee was formed by the Board in October 2018 and currently consists of Messrs. Messrs. Press and Tobia. The Investment Committee recommends strategic investments, asset allocations and ranges to guide the investment of the Company's assets. The Committee recommends the selection and retention of outside Investment Managers and reviewed the performance of the Company's assets relative to states objectives and appropriate benchmarks. The Committee also reviews the performance of the Investment Managers relative to appropriate benchmarks and peer groups. The Committee recommends exceptions to these policies and guidelines for the Board's approval as needed and it reviews the overall relevance of policies and objectives from time to time to make recommendations to the Board for changes as needed. The Investment Committee held one meeting during the fiscal year ended December 31, 2018.

Strategic Review Committee. The Strategic Review Committee was dissolved by the Board in October 2018. The Strategic Review Committee held two meetings during the fiscal year ended December 31, 2018.

Director Qualification Standards

There are no specific minimum qualifications that the Nominating and Governance Committee requires to be met by a director nominee recommended for a position on the Board, nor are there any specific qualities or skills that are necessary for one or more members of our Board to possess, other than as are necessary to meet the requirements of the rules and regulations applicable to us. The Nominating and Governance Committee considers a potential candidate's experience, areas of expertise, and other factors relative to the overall composition of the Board, including the following characteristics:

- the highest ethical standards and integrity;
- a willingness to act on and be accountable for Board decisions;
- an ability to provide wise, informed, and thoughtful counsel to top management on a range of issues;
- a history of achievement that reflects high standards for the director candidate and others;
- loyalty and commitment to driving our success;
- the independence requirements imposed by the Securities and Exchange Commission, or the SEC, and the Nasdaq Stock Market; and
- a background that provides a portfolio of experience, qualifications, attributes, skills and knowledge commensurate with our needs.

We do not have a written policy with respect to diversity of members of the Board. However, in considering nominees for service on the Board, the Nominating and Governance Committee takes into consideration, in addition to the criteria summarized above, the diversity of professional experience, viewpoints and skills of members of the Board. Examples of this include management experience, financial expertise and educational background. The Nominating and Governance Committee and the Board believe that a diverse board leads to improved performance by encouraging new ideas, expanding the knowledge base available to management and other directors and fostering a culture that promotes innovation and vigorous deliberation.

The Nominating and Governance Committee has the following policy with regard to the consideration of any director candidates recommended by security holders:

- A stockholder wishing to nominate a candidate for election to the Board at the next annual meeting is required to give written notice addressed to the Secretary, Acacia Research Corporation, 120 Newport Center Drive, Newport Beach, CA 92660, of his or her intention to make such a nomination. The notice of nomination must have been received by the Secretary at the address below no later than the close of business on n, in accordance with our Bylaws, in order to be considered for nomination at the next annual meeting.
- The notice of nomination must include information regarding the recommended candidate relevant to a determination of whether the recommended candidate would be barred from being considered independent under the Nasdaq Stock Market's Listing Qualifications or, alternatively, a statement that the recommended candidate would not be so barred. A nomination which does not comply with the above requirements will not be considered.

The Nominating and Governance Committee considers director candidates that are suggested by members of the Nominating and Governance Committee and the full Board, as well as management and stockholders. The Nominating and Governance Committee may, in the future, also retain a third-party executive search firm to identify candidates on terms and conditions acceptable to the Nominating and Governance Committee, in its sole discretion. The process by the Nominating and Governance Committee for identifying and evaluating nominees for director, including nominees recommended by stockholders, involves (with or without the assistance of a retained search firm), compiling names of potentially eligible candidates, conducting background and reference checks, conducting interviews with the candidate and others (as schedules permit), meeting to consider and approve the final candidates and, as appropriate, preparing and presenting to the full Board an analysis with regard to particular recommended candidates. The Nominating and Governance Committee endeavors to identify director nominees who have the highest personal and professional integrity, have demonstrated exceptional ability and judgment, and, together with other director nominees and members, are expected to serve the long term interest of our stockholders and contribute to our overall corporate goals.

Codes of Conduct

In February 2019, we adopted an updated corporate Code of Conduct for Employees and Directors and corporate Code of Conduct for Chief Executive Officer and Other Senior Financial Officers both of which may be viewed on our website at www.acaciaresearch.com. The corporate Code of Conduct for Employees and Directors applies to all of our officers, directors and employees. The Code of Conduct for Chief Executive Officer and Other Senior Financial Officers is an additional code that specifically applies to our principal executive officer, principal financial officer and accounting officer and controller or persons performing similar functions. Any waiver of the corporate Code of Conduct for Employees and Directors may be made only by the Board and must be promptly disclosed to stockholders in the manner required by applicable law. Any waiver of the Code of Conduct for Chief Executive Officer and Other Senior Financial Officers may be made only by the Audit Committee and must be promptly disclosed to stockholders in the manner required by applicable law.

Insider Trading Policy

Our corporate Insider Trading Policy may be viewed on our website at www.acaciaresearch.com. The Insider Trading Policy applies to all of our officers, directors and employees, including our principal executive officer, principal financial and accounting officer and controller, or persons performing similar functions.

Stockholder Communications with Directors

Stockholders wishing to communicate with the Board or with a particular member or committee of the Board should address communications to the Board, the particular member or committee of the Board, c/o Acacia Research Corporation, Attention: Secretary, 120 Newport Center Drive, Newport Beach, California 92660. All communications addressed to the Board or a particular member or committee of the Board will be relayed to that addressee. From time to time, the Board may change the process through which stockholders communicate with the Board or its members or committees. Please refer to our website at www.acaciaresearch.com for changes in this process. The Board, the particular director or committee of the Board to which a communication is addressed will, if it deems appropriate, promptly refer the matter either to management or to the full Board depending on the nature of the communication.

Board Member Attendance at Annual Stockholder Meetings

Although we do not have a formal policy regarding director attendance at annual stockholder meetings, directors are expected to attend these meetings absent extenuating circumstances. Four of our directors attended our 2018 annual meeting of stockholders.

2018 DIRECTOR COMPENSATION TABLE

The following table provides fiscal year 2018 compensation information for our non-employee directors who served on the Board during 2018:

Current Members of the Board of Directors:

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$) ⁽¹⁾	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$) ⁽²⁾	Total (\$)
Clifford Press ⁽³⁾	385,724	—	—	—	—	—	385,724
Alfred V. Tobia, Jr. ⁽³⁾	380,169	—	—	—	—	—	380,169
Maureen O'Connell ⁽⁴⁾	—	—	—	—	—	100,000	100,000
Katharine Wolanyk ⁽⁴⁾	—	—	—	—	—	—	—
Isaac T. Kohlberg ⁽⁵⁾	—	—	—	—	—	—	—
Luis E. Rinaldini ⁽⁵⁾	—	—	—	—	—	—	—

Prior members of the Board of Directors:

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)⁽¹⁾⁽⁶⁾	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)⁽⁷⁾	Total (\$)
William S. Anderson ⁽⁸⁾	11,779	—	—	—	—	—	11,779
Joseph E. Davis	28,173	—	—	—	—	—	28,173
Fred A. deBoom	55,951	—	—	—	—	—	55,951
Paul Falzone	23,378	—	—	—	—	—	23,378
Edward W. Frykman ⁽⁹⁾	26,668	—	—	—	—	—	26,668
G. Louis Graziadio, III ⁴	37,335	—	436,575	—	—	62,500	536,410
James F. Sanders	48,174	—	87,315	—	—	—	135,489
Frank E. Walsh, III	37,335	—	174,630	—	—	—	211,965
C. Allen Bradley, Jr. ⁽¹⁰⁾	30,539	—	—	—	—	—	30,539

(1) Amounts shown represent the aggregate grant date fair value of stock option awards granted to the directors as determined pursuant to ASC Topic 718, "Compensation - Stock Compensation," or ASC Topic 718. The methodology used to calculate the value of stock options is set forth under Note 2 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018 filed with the SEC on March 15, 2019.

(2) Ms. O'Connell briefly provided consulting services to the Company in fiscal year 2018 for total compensation of \$100,000.

(3) Due to exigent circumstances in connection with the departure of the Company's previous management team, each of Messrs. Press and Tobia received \$337,500 in total compensation for services rendered above and beyond their duties as directors of the Company.

(4) Meses. O'Connell and Wolanyk were appointed to the Board on January 17, 2019.

(5) Messrs. Kohlberg and Rinaldini were appointed to the Board on May 6, 2019.

(6) Messrs. Graziadio, Sanders and Walsh each received a grant of stock options on January 2, 2018 which subsequently expired unexercised. Messrs. Graziadio and Walsh were not reelected as directors at our Annual Meeting on June 14, 2018. Messrs. Anderson and Falzone resigned on July 25, 2018. Messrs. Davis, deBoom and Sanders resigned on August 7, 2018. There were no option awards outstanding at fiscal year-end for any of these directors.

(7) Reflects cash payments totaling \$62,500 made by us to Second Southern Corp., a company wholly owned by Mr. Graziadio and which he serves as President, in accordance with the Second Southern Corp. Consulting Agreement effective August 1, 2016, described below under the caption, "Certain Relationships and Related Transactions" beginning on page 51 of this Proxy Statement.

On February 16, 2017, we granted profits interest units in our majority owned subsidiary to each of our named executive officers and Mr. Graziadio as described below under the caption, "AIP Profits Interest Units" beginning on page 42 of this Proxy Statement. Mr. Graziadio's profits interests units are vested and remain outstanding as of December 31, 2018. Mr. Graziadio can only realize value from the profits interest units if, and only if, we receive our unreturned capital related to the contribution of certain assets and there is a profit actually realized related to those assets, as described in more detail below under the caption, "AIP Profits Interest Units" beginning on page 42 of this Proxy Statement.

(8) Mr. Anderson received a total of \$45,379 in fees in fiscal year 2018, however, he returned \$33,600 to the Company for failing to attend at least 75% of Board meetings held in fiscal year 2017.

(9) Mr. Frykman passed away on April 14, 2018. As of December 31, 2018 Mr. Frykman's estate had 102,800 vested and unexercised option awards with exercise prices ranging from \$3.12 to \$5.75. All of these options expired unexercised on April 13, 2019.

(10) Mr. Bradley resigned from the Board on May 8, 2019.

PROPOSAL NO. 2:

APPROVAL OF AN AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO PROVIDE FOR A DECLASSIFIED BOARD OF DIRECTORS

Our Board of Directors has unanimously approved and recommends that our stockholders approve an amendment to the Amended and Restated Certificate of Incorporation, which provides for the establishment of a declassified board structure. Our Board of Directors currently consists of six (6) members with two (2) Class I directors serving until the Annual Meeting, two (2) Class II director serving until the 2020 Annual Meeting of Stockholders and two (2) Class III directors serving until the 2021 Annual Meeting. The specific amendments to our Certificate of Incorporation necessary to make these changes are included in the full text of the Certificate of Incorporation, as proposed to be amended (the "Restated Certificate"), a copy of which is attached to this Proxy Statement as [Appendix A](#) and incorporated herein by reference.

Proposed Declassification of the Board

If adopted, Proposal No. 2 would amend our Certificate of Incorporation to remove the director classifications as the current term of each class of directors expires at the Annual Meeting, the 2020 Annual Meeting of Stockholders and the 2021 Annual Meeting of Stockholders. The current Certificate of Incorporation has each class of directors serving three-year terms with the Class I directors' term expiring at the Annual Meeting, the Class II directors' term expiring at the 2020 Annual Meeting of Stockholders and the Class III directors' term expiring at the 2021 Annual Meeting of Stockholders.

If this Proposal No. 2 is approved, upon the filing with the Secretary of State of the State of Delaware, the Restated Certificate will declassify the Board immediately so that at the 2020 Annual Meeting all directors will be up for election. Directors elected at the Annual Meeting (*i.e.*, the Class I directors) will serve on the Board until the 2020 Annual Meeting of Stockholders and until his or her successor shall be elected and shall qualify; subject, however, to prior death, resignation, retirement, disqualification or removal as a director. If this Proposal No. 2 is approved, each of our Class III directors, Messrs. Press and Tobia, have committed to tender his resignation immediately following the Annual Meeting if he is a member of the Board at that time, and each of them will immediately thereafter be appointed by the Board to one-year terms to serve until the 2020 Annual Meeting of Stockholders, and they, or any successors, will stand for election with our Class I and Class II directors to a one-year term at our 2020 Annual Meeting of Stockholders. Effective as of the 2020 Annual Meeting of Stockholders, the division of directors into three (3) classes shall terminate and all directors shall be elected to serve on the Board until the next Annual Meeting of Stockholders and until his or her successor shall be elected and shall qualify; subject, however, to prior death, resignation, retirement, disqualification or removal as a director.

This summary does not purport to be complete and is qualified in its entirety by reference to the Restated Certificate attached hereto as [Appendix A](#).

Advantages of Board Declassification

In determining whether to propose declassifying the Board to our stockholders, the Board considered the arguments in favor of and against continuation of the classified Board structure and determined that it would be in the best interests of the Company and our stockholders to declassify the Board.

The Board recognized that a classified board structure may reduce directors' accountability to stockholders, since such a structure does not enable stockholders to express a view on each director's performance by means of an annual vote, and that many institutional investors believe that the election of directors is the primary means for stockholders to influence corporate governance policies and to hold management accountable for implementing those policies.

Required Vote

The affirmative vote of the holders majority of the outstanding shares of our common stock is required to approve this Proposal No. 2. This proposal is considered a non-routine matter under applicable rules. A broker, bank or other nominee may not vote without instructions on this matter, so there may be broker non-votes in connection with this proposal. Abstentions and broker non-votes will have the same effect as votes against this proposal.

Unbundling with Other Proposals

This Proposal No. 2 is separate from the approval of Proposal No. 3 (Approval of an Amendment to the Amended and Restated Certificate of Incorporation to Eliminate Supermajority Vote Requirements for Specified Corporate Actions), Proposal

No. 4 (Approval of an Amendment to the Amended and Restated Certificate of Incorporation to Grant Stockholders the Right to Call Special Meetings of the Stockholders) and Proposal No. 5 (Approval of An Amendment to the Amended and Restated Certificate of Incorporation to Implement Certain Transfer Restrictions to Preserve Tax Benefits Associated With Our Net Operating Losses). Your votes on Proposals Nos. 3, 4 and 5 do not affect your vote on Proposal No. 2. You can vote "FOR" or "AGAINST", or "ABSTAIN" from voting on any of these proposals.

For the reasons stated above, our Board of Directors believes that approval of this proposal is in our best interests and the best interests of our stockholders.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE "FOR" THE AMENDMENT TO THE AMENDED AND RESTATE CERTIFICATE OF INCORPORATION TO PROVIDE FOR THE ELECTION OF A DECLASSIFIED BOARD OF DIRECTORS AS SET FORTH ABOVE. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD'S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

PROPOSAL NO. 3:

APPROVAL OF AN AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO ELIMINATE SUPERMAJORITY VOTE REQUIREMENTS FOR SPECIFIED CORPORATE ACTIONS

Our Board of Directors has unanimously approved and recommends that our stockholders approve an amendment to the Amended and Restated Certificate of Incorporation to eliminate the supermajority stockholder approval requirements for specified corporate actions, including amendment of our Bylaws. The specific amendments to our Certificate of Incorporation that are necessary to make these changes are included in the Restated Certificate attached to this Proxy Statement as [Appendix A](#), and are incorporated herein by reference.

Delaware law grants stockholders the right to amend, adopt, alter and repeal the bylaws of a corporation subject to the voting requirements set forth in a corporation's certificate of incorporation. Our current Certificate of Incorporation requires 66-2/3% of the voting power of the capital stock of the Company for the stockholders to adopt, amend, alter or repeal any provisions of our Bylaws.

If this Proposal No. 3 is approved, upon the filing with the Secretary of State of the State of Delaware, the Restated Certificate will require a majority of the voting power of the capital stock of the Company entitled to vote thereon to adopt, amend, alter or repeal any provision of our Bylaws.

This summary does not purport to be complete and is qualified in its entirety by reference to the Restated Certificate attached hereto as [Appendix A](#).

Advantages of Eliminating the Supermajority Vote Requirement

The Board recognizes that a majority voting standard for effecting changes to our Bylaws increases the ability of stockholders to participate in governance of the Company and aligns the Company with recognized best practices in corporate governance.

Required Vote

The affirmative vote of the holders majority of the outstanding shares of our common stock is required to approve this Proposal No. 3. This proposal is considered a non-routine matter under applicable rules. A broker, bank or other nominee may not vote without instructions on this matter, so there may be broker non-votes in connection with this proposal. Abstentions and broker non-votes will have the same effect as votes against this proposal.

Unbundling with Other Proposals

This Proposal No. 3 is separate from the approval of Proposal No. 2 (Approval of an Amendment to the Amended and Restated Certificate of Incorporation to Provide for a Declassified Board of Directors), Proposal No. 4 (Approval of an Amendment to the Amended and Restated Certificate of Incorporation to Grant Stockholders the Right to Call Special Meetings of the Stockholders) and Proposal No. 5 (Approval of An Amendment to the Amended and Restated Certificate of Incorporation to Implement Certain Transfer Restrictions to Preserve Tax Benefits Associated With Our Net Operating Losses). Your votes on Proposals Nos. 2, 4 and 5 do not affect your vote on Proposal No. 3. You can vote "FOR" or "AGAINST", or "ABSTAIN" from voting on any of these proposals.

For the reasons stated above, our Board of Directors believes that approval of this proposal is in our best interests and the best interests of our stockholders.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE "FOR" THE AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO ELIMINATE SUPERMAJORITY STOCKHOLDER APPROVAL REQUIREMENTS FOR SPECIFIED CORPORATE ACTIONS AS SET FORTH ABOVE. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD'S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

PROPOSAL NO. 4:

APPROVAL OF AN AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO GRANT STOCKHOLDERS THE RIGHT TO CALL SPECIAL MEETINGS OF THE STOCKHOLDERS

Our Board of Directors has unanimously approved and recommends that our stockholders approve an amendment to the Amended and Restated Certificate of Incorporation to permit the stockholders to call a special meeting of the stockholders. The specific amendments to our Certificate of Incorporation that are necessary to make these changes are included in the Restated Certificate attached to this Proxy Statement as [Appendix A](#), and are incorporated herein by reference.

Delaware law does not grant stockholders of a corporation the absolute right to call a special meeting. Rather, it provides that special meetings of stockholders may be called by the stockholders in accordance with the certificate of incorporation and bylaws of a corporation. Our current Certificate of Incorporation and Bylaws only allow special meetings of the stockholders to be called by the Board of Directors, the Chairman of the Board of Directors or the President.

If this Proposal No. 4 is approved, upon the filing with the Secretary of State of the State of Delaware, the Restated Certificate will grant stockholders of record that hold at least 25% (the "Requisite Percent") in voting power of the outstanding shares of stock of the Company to request a special meeting of the stockholders upon delivering a notice to the Secretary of the Company. Such notice must comply with the procedures and conditions and any other provisions set forth in our Bylaws. Upon receipt of a proper notice to call a special meeting of the stockholders, the Secretary of the Company shall call a special meeting of the stockholders.

This summary does not purport to be complete and is qualified in its entirety by reference to the Restated Certificate attached hereto as [Appendix A](#).

Advantages of Granting Stockholders the Right to Call Special Meetings of the Stockholders

If stockholders are unable to call special meetings, it may deter certain acquisitions of our stock and may delay, deter or impede stockholder action not approved by our Board of Directors. Such actions may include stockholder attempts to obtain control of our Board of Directors, unsolicited tender offers or other efforts to acquire control of the Company, including the initiation or consummation of business transactions, such as reorganizations, mergers, or recapitalizations, which are opposed by our Board of Directors even though sought by a majority of our stockholders. Based on a careful review by the Board of Directors, we think it is in the best interest of the stockholders to grant stockholders the right to call special meetings of the stockholders.

In addition, the Board of Directors has carefully reviewed the Company's current market capitalization, recent volatility in the Company's stock price and recent turnover in the Company's stockholders. In light of these circumstances and the other proposed stockholder friendly changes set forth in this Proxy Statement with respect to corporate governance, we think it is appropriate to set the Requisite Percent at 25%.

Required Vote

The affirmative vote of the holders of a majority of the outstanding shares of our common stock is required to approve this Proposal No. 4. This proposal is considered a non-routine matter under applicable rules. A broker, bank or other nominee may not vote without instructions on this matter, so there may be broker non-votes in connection with this proposal. Abstentions and broker non-votes will have the same effect as votes against this proposal.

Unbundling with Other Proposals

This Proposal No. 4 is separate from the approval of Proposal No. 2 (Approval of Restated Certificate to Declassify the Board), Proposal No. 3 (Approval of an Amendment to the Amended and Restated Certificate of Incorporation to Eliminate Supermajority Vote Requirements for Specified Corporate Actions) and Proposal No. 5 (Approval of An Amendment to the Amended and Restated Certificate of Incorporation to Implement Certain Transfer Restrictions to Preserve Tax Benefits Associated With Our Net Operating Losses). Your votes on Proposals Nos. 2, 3 and 5 do not affect your vote on Proposal No. 4. You can vote "FOR" or "AGAINST", or "ABSTAIN" from voting on any of these proposals.

For the reasons stated above, our Board of Directors believes that approval of this proposal is in our best interests and the best interests of our stockholders.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE "FOR" THE AMENDMENT TO THE AMENDED AND RESTATE CERTIFICATE OF INCORPORATION TO GRANT THE STOCKHOLDERS THE RIGHT TO CALL SPECIAL MEETINGS OF THE STOCKHOLDERS AS SET FORTH ABOVE. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD'S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

PROPOSAL NO. 5:

THE APPROVAL OF AN AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO IMPLEMENT CERTAIN TRANSFER RESTRICTIONS TO PRESERVE TAX BENEFITS ASSOCIATED WITH OUR NET OPERATING LOSSES

For the reasons discussed below under "Background," our Board of Directors recommends that our stockholders vote FOR this Proposal No. 5 to adopt an amendment to our Certificate of Incorporation (the "Protective Amendment") to protect the significant potential long-term tax benefits presented by our net operating loss carryforwards ("NOLs") and tax credits ("Tax Benefits"). The Protective Amendment is designed to prevent certain transfers of our common stock that could result in an "ownership change" under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), and, therefore, significantly impair the value of our NOLs. The specific amendments to our Certificate of Incorporation that are necessary to make these changes are included in the Restated Certificate attached to this Proxy Statement as [Appendix A](#), and are incorporated herein by reference. The Board believes it is in our and our stockholders' best interests to adopt the Protective Amendment to help protect our NOLs.

The purpose of the Protective Amendment is to assist us in protecting long-term value to the Company of its accumulated NOLs by limiting direct or indirect transfers of our common stock that could affect the percentage of stock that is treated as being owned by a holder of 4.899% of our common stock. In addition, the Protective Amendment includes a mechanism to block the impact of such transfers while allowing purchasers to receive their money back from prohibited purchases. Our Board of Directors has adopted resolutions approving and declaring the advisability of amending our Certificate of Incorporation as described below, and the complete text of the Protective Amendment is set forth in the Restated Certificate attached as [Appendix A](#) to this Proxy Statement. However, in order for the Protective Amendment to be implemented, it first must be approved by our stockholders at the Annual Meeting.

The Protective Amendment, if approved by our stockholders, would become effective upon the filing of the Restated Certificate with the Secretary of State of the State of Delaware, which we would expect to do as soon as practicable after the Protective Amendment is approved by our stockholders. Even if approved by the stockholders, the Board of Directors retains the authority to abandon the Protective Amendment for any reason at any time prior to the filing and effectiveness of the Protective Amendment with the Secretary of State of the State of Delaware.

Background

As also described in Proposal No. 6's "Background" section below, our past operations generated significant NOLs. Under federal tax laws, we generally can use our NOLs and certain related tax credits to reduce ordinary income tax paid in our prior two tax years or on our future taxable income for up to 20 years, at which point they "expire" for such purposes. Until they expire, we can "carry forward" NOLs and certain related tax credits that we do not use in any particular year to offset taxable income in future years. As of December 31, 2018, according to our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed on March 10, 2019, we had U.S. federal and state income tax NOLs totaling approximately \$222,860,808 and \$19,470,755, expiring between 2025 and 2035, and 2017 and 2036, respectively. As a result of the enactment of Public Law 115-97, commonly referred to as the Tax Cuts and Jobs Act of 2017, NOLs generated after December 31, 2017 do not expire and may be carried forward indefinitely and used to offset up to 80% of ordinary income (computed without regard to the NOL deduction), however, any such NOLs cannot be used to reduce ordinary income tax paid in prior tax years. While we cannot estimate the exact amount of NOLs that we will be able use to reduce future income tax liability because we cannot predict the amount and timing of our future taxable income, we believe our NOLs are a very valuable asset.

Our ability to utilize our NOLs to offset future taxable income may be significantly limited if we experience an "ownership change," as determined under Section 382. Under Section 382, an "ownership change" occurs if a stockholder or a group of stockholders that is deemed to own at least 5% of our common stock increases its ownership by more than 50 percentage points over its lowest ownership percentage within a rolling three-year period. If an ownership change occurs, Section 382 would impose an annual limit on the amount of our NOLs that we can use to offset taxable income equal to the product of the total value of our outstanding equity immediately prior to the ownership change (reduced by certain items specified in Section 382) and the federal long-term tax-exempt interest rate in effect for the month of the ownership change. A number of complex rules apply to calculating this annual limit.

If an ownership change is deemed to occur, the limitations imposed by Section 382 could significantly limit our ability to use our NOLs to reduce future income tax liability and result in a material amount of our NOLs expiring unused and, therefore, significantly impair the value of our NOLs. While the complexity of Section 382's provisions and the limited knowledge any public company has about the ownership of its publicly traded securities make it difficult to determine whether an ownership

change has occurred, we currently believe that an ownership change of the Company has not occurred. However, if no action is taken to protect our NOLs, we believe it is possible that we could experience an ownership change before our NOLs are fully-utilized or expire.

After careful consideration, our Board of Directors determined that the most effective way to protect the significant potential long-term tax benefits presented by our NOLs is to adopt the Protective Amendment and to maintain our Tax Benefits Preservation Plan, dated as of March 16, 2019 (the "Plan"). The Plan was adopted by the Board on March 12, 2019, and we are seeking ratification of the Plan by our stockholders at the Annual Meeting. The Plan is described below in Proposal No. 6, and a copy of the Plan is attached to this Proxy Statement as [Appendix B](#), and is incorporated herein by reference.

Our Board of Directors urges stockholders to read Proposal No. 5 and the items discussed below under the heading "Certain Considerations Related to the Protective Amendment" and the complete text of the Protective Amendment, which is set forth in the Restated Certificate attached as [Appendix A](#) to this Proxy Statement. It is important to note that neither the Protective Amendment nor the Plan, nor the two taken together, offers a complete solution and that an ownership change may occur even if the Protective Amendment is approved by our stockholders. There may be limitations on the enforceability of the Protective Amendment against stockholders who do not vote to approve it that may allow an ownership change to occur. Moreover, the Plan may deter, but ultimately cannot block, transfers of common stock that might result in an ownership change. The limitations of the Protective Amendment are described in more detail below. Because of their individual limitations, the Board believes that the adoption of the Protective Amendment and ratifying the Plan is appropriate and that together they will serve as important tools to help prevent an ownership change that could substantially reduce or eliminate the significant potential long-term tax benefits presented by our NOLs. Accordingly, the Board of Directors recommends that stockholders approve the this Proposal No. 5 to approve the Protective Amendment.

Description

The following description of the Protective Amendment is qualified in its entirety by reference to the complete text of the Protective Amendment, which is set forth in the Restated Certificate attached as [Appendix A](#) to this Proxy Statement. Please read the Protective Amendment in its entirety as the discussion below is only a summary.

Prohibited Transfers. The Protective Amendment generally will restrict any direct or indirect transfer (such as transfers of our common stock that result from the transfer of interests in other entities that own our common stock) if the effect would be to:

- increase the direct or indirect ownership of our common stock by any Person (as defined below) from less than 4.899% to 4.899% or more of our common stock; or
- increase the percentage of our common stock owned directly or indirectly by a Person owning or deemed to own 4.899% or more of our common stock.

"Person" means any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association or organization, trust or other entity or any group of such "Persons" having a formal or informal understanding among themselves to make a "coordinated acquisition" of shares within the meaning of Treas. Reg. § 1.382-3(a)(1) or who are otherwise treated as an "entity" within the meaning of Treas. Reg. § 1.382-3(a)(1), and shall include any successor (by merger or otherwise) of any such entity or group.

Complicated "constructive" ownership rules prescribed by the Code (and regulations promulgated thereunder) apply for purposes of determining whether a Person is a 4.899% stockholder under the Protective Amendment. For example, these rules can attribute ownership of common stock among certain related persons, among a corporation and its shareholders, and among a partnership and its partners. In addition, under Section 382, groups of public shareholders can be treated as a single shareholder under the Protective Amendment (so-called "public groups"), including groups of investors who hold common stock indirectly through an aggregating vehicle (such as an investment fund). Each holder of common stock should consult its tax advisers to determine whether such holder is a 4.899% shareholder under the Protective Amendment.

Restricted transfers include sales to Persons whose resulting percentage ownership (direct or indirect) of our common stock would exceed the 4.899% thresholds discussed above, or to Persons whose direct or indirect ownership of our common stock would by attribution cause another Person to exceed such threshold under the constructive ownership rules described above. A transfer from one member of a public group to another member of the same public group does not increase the percentage of our common stock owned directly or indirectly by the public group and, therefore, such transfers are not restricted. In addition, in order to facilitate sales by our stockholders into the market, the Protective Amendment permits otherwise prohibited transfers of

our common stock where the transferee is a public group. For purposes of determining the existence and identity of, and the amount of our common stock owned by, any stockholder, we will be entitled to rely on the existence or absence of certain public securities filings as of any date, and our actual knowledge of the ownership of our common stock. The Protective Amendment includes the right to require a proposed transferee, as a condition to registration of a transfer of our common stock, to provide all information reasonably requested regarding such person's direct and indirect ownership of our common stock.

These transfer restrictions may result in the delay or refusal of certain requested transfers of our common stock, or prohibit ownership (thus requiring dispositions) of our common stock due to a change in the relationship between two or more persons or entities or to a transfer of an interest in an entity other than us that, directly or indirectly, owns our common stock. The transfer restrictions will also apply to proscribe the creation or transfer of certain "options" (which are broadly defined by Section 382) with respect to our common stock to the extent that, in certain circumstances, the creation, transfer or exercise of the option would result in a proscribed level of ownership.

Consequences of Prohibited Transfers. Upon adoption of the Protective Amendment, any direct or indirect transfer attempted in violation of the Protective Amendment would be void as of the date of the prohibited transfer as to the purported transferee (or, in the case of an indirect transfer, the ownership of the direct owner of our common stock would terminate simultaneously with the transfer), and the purported transferee (or in the case of any indirect transfer, the direct owner) would not be recognized as the owner of the shares owned in violation of the Protective Amendment for any purpose, including for purposes of voting and receiving dividends or other distributions in respect of such shares, or in the case of options, receiving shares in respect of their exercise. In this Proxy Statement, our common stock purportedly acquired in violation of the Protective Amendment is referred to as "excess stock."

In addition to a prohibited transfer being void as of the date it is attempted, upon demand, the purported transferee must transfer the excess stock to our agent along with any dividends or other distributions paid with respect to such excess stock. Our agent is required to sell such excess stock in an arm's-length transaction (or series of transactions) that would not constitute a violation under the Protective Amendment. The net proceeds of the sale, together with any other distributions with respect to such excess stock received by our agent, after deduction of all costs incurred by the agent, will be transferred first to the purported transferee in an amount, if any, up to the cost (or in the case of gift, inheritance or similar transfer, the fair market value of the excess stock on the date of the prohibited transfer) incurred by the purported transferee to acquire such excess stock, and the balance of the proceeds, if any, will be transferred to a charitable beneficiary. If the excess stock is sold by the purported transferee, such person will be treated as having sold the excess stock on behalf of the agent, and will be required to remit all proceeds to our agent (except to the extent we grant written permission to the purported transferee to retain an amount not to exceed the amount such person otherwise would have been entitled to retain had our agent sold such shares).

To the extent permitted by law, any stockholder who knowingly violates the Protective Amendment will be liable for any and all damages we suffer as a result of such violation, including damages resulting from any limitation in our ability to use our NOLs and any professional fees incurred in connection with addressing such violation.

A transfer of common stock that does not involve a transfer of our securities within the meaning of Delaware law may cause a person to violate the Protective Amendment. For example, a redemption of shares of common stock may cause a Person to own common stock in excess of the ownership limit. Similarly, an indirect owner of common stock may exceed the ownership limitation by operation of the constructive ownership rules described above. In this latter case, the direct owner of our common stock (whether or not owning shares in excess of the ownership limit) will be subject to the excess share procedures described above and will be deemed to have disposed of (and will be required to dispose of) sufficient securities, simultaneously with the transfer, to cause the indirect owner of common stock not to be in violation of the Protective Amendment, and such securities will be treated as excess stock to be disposed of through the agent under the provisions summarized above, with the maximum amount payable to such stockholder that was the direct holder of such excess stock from the proceeds of sale by the agent being the fair market value of such excess stock at the time of the prohibited transfer.

Modification and Waiver of Transfer Restrictions. In addition, our Board of Directors will have the discretion to approve a transfer of our common stock that would otherwise violate the transfer restrictions if it determines that the transfer is in our and our stockholders' best interests. If our Board of Directors decides to permit such a transfer, that transfer or later transfers may result in an ownership change that could limit our use of our NOLs. In deciding whether to grant a waiver, our Board of Directors may seek the advice of counsel and tax experts with respect to the preservation of our federal tax attributes pursuant to Section 382. In addition, our Board of Directors may request relevant information from the acquirer and/or selling party in order to determine compliance with the Protective Amendment or the status of our federal income tax benefits, including an opinion of counsel selected by our Board of Directors (the cost of which will be borne by the transferor and/or the transferee) that the transfer will not result in a limitation on the use of our NOLs under Section 382. If our Board of Directors decides to grant a waiver, it may impose conditions on such waiver on the acquirer or selling party.

In the event of a change in law, our Board of Directors will be authorized to modify the applicable allowable percentage ownership interest (currently 4.899%) or modify any of the definitions, terms and conditions of the transfer restrictions or to eliminate the transfer restrictions, provided that our Board of Directors determines, by adopting a written resolution, that such action is reasonably necessary or advisable to preserve our NOLs or that the continuation of these restrictions is no longer reasonably necessary for such purpose, as applicable. Our stockholders will be notified of any such determination through a filing with the SEC or such other method of notice as the Secretary of the Company shall deem appropriate.

Our Board of Directors may establish, modify, amend or rescind bylaws, regulations and procedures for purposes of determining whether any transfer of common stock would jeopardize our ability to use our NOLs.

Implementation and Expiration

If our stockholders approve the Protective Amendment, we intend to file the Protective Amendment promptly with the Secretary of State of the State of Delaware, whereupon the Protective Amendment will become effective. We intend to enforce the restrictions in the Protective Amendment immediately thereafter to preserve the future use of our NOLs. We also intend to include a legend reflecting the transfer restrictions included in the Protective Amendment on certificates representing newly issued or transferred shares, to disclose such restrictions to persons holding our common stock in uncertificated form and to disclose such restrictions to the public generally.

Even if our stockholders approve the Protective Amendment, the Board retains the authority to abandon the Protective Amendment for any reason at any time prior to the filing and effectiveness of the Protective Amendment with the Secretary of State of the State of Delaware.

The Protective Amendment would expire on the earliest of (i) the close of business on the date that is the third anniversary of the filing of the Protective Amendment with the Secretary of State of the State of Delaware, (ii) our Board of Directors' determination that the Protective Amendment is no longer necessary for the preservation of our NOLs because of the repeal of Section 382 or any successor statute, (iii) the beginning of a taxable year to which our Board of Directors determines that none of our NOLs may be carried forward and (iv) such date as our Board of Directors otherwise determines that the Protective Amendment is no longer necessary for the preservation of our NOLs. Our Board of Directors may also accelerate the expiration date of the Protective Amendment in the event of a change in the law if our Board of Directors has determined that the continuation of the restrictions contained in the Protective Amendment is no longer reasonably necessary for the preservation of our NOLs or such action is otherwise reasonably necessary or advisable.

Effectiveness and Enforceability

Although the Protective Amendment is intended to reduce the likelihood of an ownership change, we cannot eliminate the possibility that an ownership change will occur even if the Protective Amendment is adopted given that:

The Board can permit a transfer to an acquirer that results or contributes to an ownership change if it determines that such transfer is in our and our stockholders' best interests.

A court could find that part or all of the Protective Amendment is not enforceable, either in general or as applied to a particular stockholder or fact situation. Delaware law provides that transfer restrictions with respect to shares issued prior to the adoption of the restriction are effective against (i) holders of those securities that are parties to the applicable agreement or voted in favor of the restriction and (ii) purported successors or transferees of such holders if (A) the transfer restriction is noted conspicuously on the certificate(s) representing such shares or (B) the successor or transferee had actual knowledge of the transfer restrictions (even absent such conspicuous notation). We intend to cause shares of our common stock issued after the effectiveness of the Protective Amendment to be issued with the relevant transfer restriction conspicuously noted on the certificate(s) representing such shares, and therefore under Delaware law such newly issued shares will be subject to the transfer restriction. We also intend to disclose such restrictions to persons holding our common stock in uncertificated form. For the purpose of determining whether a stockholder is subject to the Protective Amendment, we intend to take the position that all shares issued prior to the effectiveness of the Protective Amendment that are proposed to be transferred were voted in favor of the Protective Amendment, unless the contrary is established. We may also assert that stockholders have waived the right to challenge or otherwise cannot challenge the enforceability of the Protective Amendment, unless a stockholder establishes that it did not vote in favor of the Protective Amendment. Nonetheless, despite these actions, a court still could find that the Protective Amendment is unenforceable, either in general or as applied to a particular stockholder or fact situation.

Despite the adoption of the Protective Amendment, there is still a risk that certain changes in relationships among stockholders or other events could cause an ownership change under Section 382. Accordingly, we cannot assure you that an

ownership change will not occur even if the Protective Amendment is made effective. However, our Board of Directors has adopted the Plan, which is intended to act as a deterrent to any person acquiring more than 4.899% of our common stock and endangering our ability to use our NOLs.

As a result of these and other factors, the Protective Amendment is intended to reduce, but does not eliminate, the risk that we will undergo an ownership change that would limit our ability to utilize our NOLs.

Section 382 Ownership Change Determinations

The rules of Section 382 are very complex and are beyond the scope of this summary discussion. Some of the factors that must be considered in determining whether a Section 382 ownership change has occurred include the following:

Each stockholder who owns less than 5% of our common stock is generally (but not always) aggregated with other such stockholders and treated as a single "5-percent stockholder" for purposes of Section 382. Transactions in the public markets among such stockholders are generally (but not always) excluded from the Section 382 calculation.

There are several rules regarding the aggregation and segregation of stockholders who otherwise do not qualify as Section 382 "5-percent stockholders." Ownership of stock is generally attributed to its ultimate beneficial owner without regard to ownership by nominees, trusts, corporations, partnerships or other entities.

Acquisitions by a person that cause the person to become a Section 382 "5-percent stockholder" generally result in a 5% (or more) change in ownership, regardless of the size of the final purchase(s) that caused the threshold to be exceeded.

Certain constructive ownership rules, which generally attribute ownership of stock owned by estates, trusts, corporations, partnerships or other entities to the ultimate indirect individual owner thereof, or to related individuals, are applied in determining the level of stock ownership of a particular stockholder. Special rules can result in the treatment of options (including warrants) or other similar interests as having been exercised if such treatment would result in an ownership change.

Our redemption or buyback of our common stock will increase the ownership of any Section 382 "5-percent stockholders" (including groups of stockholders who are not individually 5-percent stockholders) and can contribute to an ownership change. In addition, it is possible that a redemption or buyback of shares could cause a holder of less than 5% to become a Section 382 "5-percent stockholder," resulting in a 5% (or more) change in ownership.

Certain Considerations Related to the Protective Amendment

Our Board believes that attempting to protect the tax benefits of our NOLs as described above under "Background" is in our and our stockholders' best interests. However, we cannot eliminate the possibility that an ownership change will occur even if the Protective Amendment is approved. Please consider the items discussed below in voting on this Proposal No. 5.

The Internal Revenue Service ("IRS") could challenge the amount of our NOLs or claim we experienced an ownership change, which could reduce the amount of our NOLs that we can use or eliminate our ability to use them altogether.

The IRS has not audited or otherwise validated the amount of our NOLs. The IRS could challenge the amount of our NOLs, which could limit our ability to use our NOLs to reduce our future taxable income. In addition, the complexity of Section 382's provisions and the limited knowledge any public company has about the ownership of its publicly traded stock make it difficult to determine whether an ownership change has occurred. Therefore, we cannot assure you that the IRS will not claim that we experienced an ownership change and attempt to reduce or eliminate the benefit of our NOLs even if the Protective Amendment is in place.

Continued Risk of Ownership Change

Although the Protective Amendment is intended to reduce the likelihood of an ownership change, we cannot assure you that it would prevent all transfers of our common stock that could result in such an ownership change. In particular, absent a court determination, we cannot assure you that the Protective Amendment's restrictions on acquisition of our common stock will be enforceable against all our stockholders, and it may be subject to challenge on equitable grounds, as discussed above.

Potential Effects on Liquidity

The Protective Amendment will restrict a stockholder's ability to acquire, directly or indirectly, additional shares of our common stock in excess of the specified limitations. Furthermore, a stockholder's ability to dispose of our common stock may be limited by reducing the class of potential acquirers for such shares. In addition, a stockholder's ownership of our common stock may become subject to the restrictions of the Protective Amendment upon actions taken by persons related to, or affiliated with, such stockholder. Stockholders are advised to carefully monitor their ownership of our stock and consult their own legal advisors and/or us to determine whether their ownership of our common stock approaches the restricted levels.

Potential Impact on Value

If the Protective Amendment is adopted, our Board of Directors intends to include a legend reflecting the transfer restrictions included in the Protective Amendment on certificates representing newly issued or transferred shares, to disclose such restrictions to persons holding our common stock in uncertificated form, and to disclose such restrictions to the public generally. Because certain buyers, including persons who wish to acquire more than 5% of our common stock and certain institutional holders who may not be comfortable holding our common stock with restrictive legends, may not choose to purchase our common stock, the Protective Amendment could depress the value of our common stock in an amount that could more than offset any value preserved from protecting our NOLs.

Potential Anti-Takeover Impact

The reason our Board of Directors approved the Protective Amendment is to protect the significant potential long-term tax benefits presented by our NOLs. The Protective Amendment is not intended to prevent a takeover of the Company. However, the Protective Amendment, if approved by our stockholders, could be deemed to have an anti-takeover effect because, among other things, it will restrict the ability of a person, entity or group to accumulate more than 4.899% of our common stock and the ability of persons, entities or groups now owning more than 4.899% of our common stock to acquire additional shares of our common stock without the approval of our Board of Directors. Accordingly, the overall effects of the Protective Amendment, if approved by our stockholders, may be to render more difficult, or discourage, a merger, tender offer, proxy contest or assumption of control by a substantial holder of our securities.

Effect of the Protective Amendment If You Vote For It and Already Directly or Indirectly Own More Than 4.99% of our common stock

If you already own more than 4.899% of our common stock, you would be able to transfer shares of our common stock only if the transfer does not increase the percentage of stock ownership of another holder of 4.899% or more of our common stock or create a new holder of 4.899% or more of our common stock. You will also be able to transfer your shares of our common stock through open-market sales to a public group. Shares acquired in any such transaction will be subject to the Protective Amendment's transfer restrictions.

Effect of the Protective Amendment If You Vote For It and Directly or Indirectly Own Less Than 4.899% of our common stock

The Protective Amendment will apply to you, but, so long as you own less than 4.899% of our common stock you can transfer your shares to a purchaser who, after the sale, also would own less than 4.899% of our common stock.

Effect of the Protective Amendment If You Vote Against It

Delaware law provides that transfer restrictions with respect to shares issued prior to the adoption of the restriction are effective against (i) holders of those securities that are parties to the applicable agreement or voted in favor of the restriction and (ii) purported successors or transferees of such holders if (A) the transfer restriction is noted conspicuously on the certificate(s) representing such shares or (B) the successor or transferee had actual knowledge of the transfer restrictions (even absent such conspicuous notation). We intend to cause shares of our common stock issued after the effectiveness of the Protective Amendment to be issued with the relevant transfer restriction conspicuously noted on the certificate(s) representing such shares, and therefore under Delaware law such newly issued shares will be subject to the transfer restriction. We also intend to disclose such restrictions to persons holding our common stock in uncertificated form. For the purpose of determining whether a stockholder is subject to the Protective Amendment, we intend to take the position that all shares issued prior to the effectiveness of the Protective Amendment that are proposed to be transferred were voted in favor of the Protective Amendment, unless the contrary is established. We may also assert that stockholders have waived the right to challenge or otherwise cannot challenge the enforceability of the Protective Amendment, unless a stockholder establishes that it did not vote in favor of the Protective Amendment. Nonetheless, despite these actions, a court still could find that the Protective Amendment is unenforceable, either in general or as applied to a particular stockholder or fact situation.

This summary does not purport to be complete and is qualified in its entirety by reference to the Restated Certificate attached hereto as [Appendix A](#).

Required Vote

The affirmative vote of the holders of a majority of the outstanding shares of our common stock is required to approve this Proposal No. 5. This proposal is considered a non-routine matter under applicable rules. A broker, bank or other nominee may not vote without instructions on this matter, so there may be broker non-votes in connection with this proposal. Abstentions and broker non-votes will have the same effect as votes against this proposal.

Unbundling with Other Proposals

This Proposal No. 5 is separate from the approval of Proposal No. 2 (Approval of Restated Certificate to Declassify the Board), Proposal No. 3 (Approval of an Amendment to the Amended and Restated Certificate of Incorporation to Eliminate Supermajority Vote Requirements for Specified Corporate Actions) and Proposal No. 4 (Approval of an Amendment to the Amended and Restated Certificate of Incorporation to Grant Stockholders the Right to Call Special Meetings of the Stockholders). Your votes on Proposals Nos. 2, 3 and 4 do not affect your vote on Proposal No. 5. You can vote "FOR" or "AGAINST", or "ABSTAIN" from voting on any of these proposals.

Further, this Proposal No. 5 is separate from the approval of Proposal No. 6 (Ratification of 2019 Tax Benefits Preservation Plan). Your vote on Proposal No. 6 does not affect your vote on Proposal No. 5. You can vote "FOR" or "AGAINST", or "ABSTAIN" from voting on either of these proposals.

For the reasons stated above, our Board of Directors believes that approval of this proposal is in our best interests and the best interests of our stockholders.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE "FOR" THE AMENDMENT TO THE AMENDED AND RESTATE CERTIFICATE OF INCORPORATION TO IMPLEMENT CERTAIN TRANSFER RESTRICTIONS TO PRESERVE TAX BENEFITS ASSOCIATED WITH OUR NET OPERATING LOSSES AS SET FORTH ABOVE. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD'S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

RATIFICATION OF 2019 TAX BENEFITS PRESERVATION PLAN

We are asking our stockholders to ratify the Tax Benefits Preservation Plan, dated as of March 16, 2019 (the "Plan"), by and between the Company and Computershare Trust Company, N.A., as Rights Agent (the "Rights Agent"), as disclosed in this Proxy Statement and in [Appendix B](#) to this Proxy Statement. The Plan is currently in effect.

Please read the Plan in its entirety as the discussion below is only a summary.

Background

On March 12, 2019, our Board approved the adoption of the Plan in order to protect our ability to utilize potential tax assets, such as NOLs and Tax Benefits to offset potential future taxable income. According to our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed on March 10, 2019, we had U.S. federal and state income tax NOLs totaling approximately \$222,860,808 and \$19,470,755, expiring between 2025 and 2035, and 2017 and 2036, respectively. As such, the potential economic benefit of the Plan is material. The Code limits the ability of a company to use its NOLs if it experiences an "ownership change," as defined in Section 382 of the Code. A company generally experiences such an ownership change if the percentage of its stock owned by its "5-percent stockholders," as defined in Section 382 of the Code, increases by more than 50 percentage points over a rolling three-year period.

The Plan is designed to reduce the likelihood that we will experience an ownership change by discouraging any (i) person or group from acquiring beneficial ownership of 4.9% or more of our outstanding common stock and (ii) any existing stockholders who, as of the time of the first public announcement of the adoption of the Plan, beneficially own more than 4.9% of our then-outstanding shares of our common stock from acquiring additional shares of our common stock (subject to certain exceptions). There is no guarantee, however, that the Plan will prevent us from experiencing an ownership change.

A company that experiences an ownership change generally will be subject to an annual limitation on certain of its pre-ownership change tax assets equal to the value of the corporation immediately before the ownership change, multiplied by the long-term-tax-exempt rate (subject to certain adjustments), provided that the annual limitation will be increased each year to the extent that there is an unused limitation in a prior year. The limitation arising from an ownership change on our ability to utilize the Tax Benefits depends on the value of our stock at the time of the ownership change. If our Tax Benefits are subject to limitation because we experience an ownership change, depending on the value of our stock at the time of the ownership change, our tangible common equity might be reduced.

In connection with the adoption of the Plan, our Board authorized and declared a dividend distribution of one right (a "Right") for each outstanding share of our common stock to stockholders of record at the close of business on March 16, 2019.

Description of the Plan

The following summary of the Plan does not purport to be complete and is qualified in its entirety by the full text of the Plan, a copy of which is attached as an appendix to this Proxy Statement and is incorporated herein by reference.

Distribution Date. Subject to certain exceptions, Rights would separate from our common stock and become exercisable apart from our common stock only following the earlier of (i) the close of business on the tenth (10th) business day after public announcement that a person has become an "Acquiring Person" or (ii) the close of business on the tenth (10th) business day (or such later date as our Board shall determine) after a third party makes a tender or exchange offer which, if consummated, would result in such third party becoming an Acquiring Person.

Exercise of Rights. On or after the Distribution Date, each Right would initially entitle the holder to purchase one one-thousandth of a share of our Series B Junior Participating Preferred Stock (the "Preferred Stock"), for a purchase price of \$12.00 (subject to adjustment) (the "Exercise Price"). Under certain circumstances set forth in the Plan, we may suspend the exercisability of the Rights.

Definition of Acquiring Person. An "Acquiring Person" is a person or group that, together with affiliates and associates of such person or group, acquires beneficial ownership of 4.9% or more of our common stock, other than: (i) our company, our subsidiaries and our respective employee benefit plans; (ii) any stockholder that, as of the time of the first public announcement of adoption of the Plan, beneficially owns 4.9% or more of our common stock (unless and until such person thereafter acquires any additional shares of our common stock, subject to certain exceptions); (iii) a person who becomes an

Acquiring Person solely as a result of our repurchasing shares of our common stock or a stock dividend, stock split, reverse stock split or similar transaction effected by us (unless and until such person acquires additional shares, other than in certain specified exempt transactions) and (iv) certain stockholders who, inadvertently or without knowledge of the terms of the Rights, buy shares in excess of 4.899% of our common stock and who thereafter reduce the percentage of shares owned below 4.9%. Prior to the Distribution Date, our Board has sole discretion to make an affirmative determination, taking into account the intent and purposes of the Plan or other circumstances facing us, that a person is not an Acquiring Person (even if such person satisfies the requirements of any of subclauses (i), (ii), (iii) or (iv) above if and for so long as such person complies with any limitations or conditions required by our Board in making such determination).

"Flip-in" Feature. If any person or group of affiliated or associated persons becomes an Acquiring Person, then each Right (other than Rights owned by an Acquiring Person, its affiliates, associates or certain transferees, which will become void) will entitle the holder to purchase, at the then current exercise price, our common stock (or, in certain circumstances, a combination of our common stock, other securities, cash or other property) having a value of twice the exercise price of the Right, in effect enabling a purchase at half-price. However, Rights are not exercisable following such an event until such time as the Rights are no longer redeemable by us as described below.

"Flip-over" Feature. If, at any time after a person or group of affiliated or associated persons becomes an Acquiring Person, we engage in a merger or other business combination transaction or series of related transactions in which we are not the surviving corporation, our common stock is changed or exchanged, or fifty percent (50%) or more of its assets, cash flow or earning power is sold, then each Right (not previously voided by the occurrence of a Flip-in Event) will entitle the holder to purchase, at the Right's then current exercise price, common stock of such Acquiring Person having a value of twice the Right's then current exercise price, in effect enabling a purchase at half-price.

Exchange Option. At any time after a person or group of affiliated or associated persons becomes an Acquiring Person and prior to the acquisition by such person or group of fifty percent (50%) or more of the then outstanding shares of our common stock, our Board may, in lieu of allowing Rights to be exercised, cause each outstanding Right (other than Rights owned by an Acquiring Person, its affiliates, associates or certain transferees, which will become void) to be exchanged for one share of our common stock or one one-thousandth of a share of Preferred Stock, in each case as adjusted to reflect stock splits or similar transactions.

Redemption. The Rights may be redeemed by our Board, at a price of \$0.001 per Right at any time prior to the earlier of (i) the tenth (10th) business day following a public announcement that a person or group of affiliated or associated persons has become an Acquiring Person or (ii) the final expiration of the Rights.

Power to Amend. Prior to a Distribution Date, we may amend the Plan in any respect, other than to extend the expiration of the Rights, without stockholder approval. From and after a Distribution Date, we may amend the Plan without the approval of holders of certificates representing Rights in order to (i) cure any ambiguity, (ii) correct or supplement any provision which may be defective or inconsistent with any other provisions, (iii) shorten or lengthen any time period (other than to lengthen the final expiration date of the Rights) or (iv) change or supplement the provisions in any manner which we may deem necessary or desirable and which does not adversely affect the interests of the holders of certificates representing Rights. The Plan, however, may not be amended at such time as the Rights are not redeemable (other than certain limited technical amendments).

Expiration. The Rights will expire on the earliest of (i) 5:00 P.M., New York, New York time, on March 15, 2021, (ii) the time at which the rights are redeemed or exchanged pursuant to the Plan, (iii) the close of business on the effective date of the repeal of Section 382 or any successor statute if our Board determines that the Plan is no longer necessary or desirable for the preservation of Tax Benefits or (iv) the close of business on the first day of a taxable year of our company to which our Board determines that Tax Benefits may not be carried forward.

Rights Certificates. Prior to a Distribution Date, the Rights will be evidenced by, and trade with, our common stock and will not be exercisable or transferable apart from our common stock. After a Distribution Date, the Rights Agent will send certificates representing Rights to stockholders and the Rights will trade independent of our common stock.

No Rights as a Stockholder; Other Matters. Until a Right is exercised, the holder of Rights, as such, is not entitled to any separate rights as a stockholder of our company (such as voting or dividend rights). Although the distribution of the Rights will not be taxable to stockholders or to us for U.S. federal income tax purposes, stockholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for our common stock (or other consideration) or for common stock of the acquiring company or in the event of the redemption of the Rights as set forth above.

Additional Considerations

Our Board believes that approval by our stockholders of the Plan is in our and our stockholders' best interests. However, in addition to the risk factors listed in our Annual Report on Form 10-K, please consider the items discussed below when voting on this proposal.

The Internal Revenue Service could challenge the amount of our Tax Benefits or claim we experienced an ownership change, which could significantly reduce the amount of our Tax Benefits that we can use or eliminate our ability to use them altogether.

The Internal Revenue Service (the "IRS") has not audited or otherwise validated the amount of our Tax Benefits. The IRS could challenge the amount of our Tax Benefits, which could limit our ability to use our Tax Benefits to reduce our future taxable income. In addition, the complexity of the relevant rules under the Code governing the use of Tax Benefits and the limited knowledge that any public company has about the ownership of its publicly traded common stock, may make it difficult to determine whether an ownership change has occurred. As such, even if the Plan remains in effect, the IRS could claim that we experienced an ownership change and attempt to reduce or eliminate the amount of our Tax Benefits.

Continued Risk of Ownership Change

As discussed above, although the Plan is intended to reduce the likelihood of an ownership change, we cannot assure you that it would prevent all transfers of our common stock that could result in an ownership change.

Potential Impact on the Price of Our Common Stock

The Plan, which is currently in effect, discourages future stockholders from becoming 5% stockholders of our common stock and existing 5% stockholders from acquiring additional shares of our common stock. Certain investors may not be comfortable holding our common stock subject to the terms of the Plan. As such, approving this proposal to keep the Plan in place could continue the risk that the Plan may depress the price of our common stock, including in an amount that could more than offset the value preserved by protecting our Tax Benefits through the Plan.

Potential Anti-Takeover Impact

Our Board approved the Plan in order to preserve the long-term value of our Tax Benefits. The Plan is not intended to prevent a takeover of our company, was not executed as the result of any potential takeover transaction known to us and is not part of a plan by us to adopt a series of anti-takeover measures. However, the Plan could be deemed to have a potential anti-takeover effect because an Acquiring Person may be diluted under certain circumstances under the Plan.

Required Vote

Our stockholders may vote "for" or "against" or "abstain" from voting on the following resolution regarding the Plan. To be approved, this proposal will require an affirmative vote of a majority of shares present in person or represented by proxy and that are entitled to vote on this proposal at the Annual Meeting. The Plan is currently in effect. However, if we do not receive the affirmative vote of a majority of shares present in person or represented by proxy and entitled to vote on this proposal at the Annual Meeting, then the Board may, although it is not required to, reconsider whether or not to preserve the Plan. Based on the foregoing, we ask our stockholders to approve the following resolution at the Annual Meeting:

"RESOLVED, that stockholders of Acacia Research Corporation ratify and approve the adoption of the Tax Benefits Preservation Plan, dated as of March 16, 2019, between the Company and Computershare Trust Company, N.A., as Rights Agent, as disclosed in this Proxy Statement and in [Appendix B](#) to this Proxy Statement."

This proposal is considered a non-routine matter under applicable rules. A broker, bank or other nominee may not vote without instructions on this matter, so there may be broker non-votes in connection with this proposal. Broker non-votes will have no effect on this proposal. Abstentions will be the equivalent of a vote against this proposal.

Unbundling with Other Proposals

This Proposal No. 6 is separate from the approval of Proposal No. 5 (Approval of An Amendment to the Amended and Restated Certificate of Incorporation to Implement Certain Transfer Restrictions to Preserve Tax Benefits Associated With Our

Net Operating Losses). Your vote on Proposal No. 5 does not affect your vote on Proposal No. 6. You can vote "FOR" or "AGAINST", or "ABSTAIN" from voting on either of these proposals.

For the reasons stated above, our Board of Directors believes that approval of this proposal is in our best interests and the best interests of our stockholders.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE "FOR" THE RATIFICATION OF THE TAX BENEFITS PRESERVATION PLAN, DATED AS OF MARCH 16, 2019, BY AND BETWEEN THE COMPANY AND COMPUTERSHARE TRUST COMPANY, N.A., AS RIGHTS AGENT, AS DISCLOSED IN THIS PROXY STATEMENT AND IN THE APPENDIX TO THIS PROXY STATEMENT. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD'S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

PROPOSAL NO. 7:

RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Grant Thornton LLP, our independent registered public accounting firm for the fiscal year ended December 31, 2018, was recommended by the Audit Committee, and approved by the Board, to act in such capacity for the fiscal year ending December 31, 2019, subject to ratification by the stockholders.

If our stockholders do not ratify the selection of Grant Thornton LLP, or if Grant Thornton LLP should decline to act or otherwise become incapable of acting as our independent registered public accounting firm, or if our engagement of Grant Thornton LLP as our independent registered public accounting firm should be discontinued, the Board, on the recommendation of the Audit Committee, will appoint a substitute independent registered public accounting firm. A representative of Grant Thornton LLP is expected to be present at the Annual Meeting, will be given the opportunity to make a statement if he or she so desires and will be available to respond to appropriate questions.

Required Vote

The affirmative vote of the holders of a majority of the outstanding shares of our common stock present in person or by proxy and entitled to vote at the Annual Meeting is required to ratify the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2019. This proposal is considered a routine matter under applicable rules. A broker, bank or other nominee may generally vote without instructions on this matter, so we do not expect any broker non-votes in connection with this proposal. Abstentions will be the equivalent of a vote against this proposal.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE “FOR” THE RATIFICATION OF THE APPOINTMENT OF GRANT THORNTON LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDING DECEMBER 31, 2018. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD’S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

Audit and Related Fees

Grant Thornton LLP served as our independent registered public accounting firm for the years ended December 31, 2018 and 2017. Fees billed in connection with services rendered by Grant Thornton LLP were as set forth below (on a consolidated basis including Acacia Research Corporation and its subsidiaries).

Period:	Audit Fees⁽¹⁾	Audit Related Fees⁽²⁾	Tax Services Fees⁽³⁾	All Other Fees
Fiscal Year Ended December 31, 2018	\$ 427,000	\$ 40,000	\$ 178,000	\$ —
Fiscal Year Ended December 31, 2017	\$ 605,000	\$ 43,000	\$ 175,000	\$ —

(1) Includes fees for professional services rendered for the audit of our annual consolidated financial statements included in our Form 10-K, the audit of the effectiveness of our internal control over financial reporting on the Form 10-K, consent fees, and for reviews of our consolidated financial statements included in our quarterly reports on Form 10-Q.

(2) Includes fees for professional services rendered for audit related work performed for certain stand-alone operating subsidiaries during the period.

(3) Includes fees for professional services rendered in connection with the preparation of consolidated and subsidiary federal and state income tax returns, and tax related provision work, research, compliance and consulting.

Audit Committee Pre-Approval Policy

The Audit Committee has established policies and procedures regarding pre-approval of all services provided by the independent registered public accounting firm. At the beginning of the fiscal year, the Audit Committee pre-approves the engagement of the independent registered public accounting firm to provide audit services based on fee estimates. The Audit Committee also pre-approves proposed audit-related services, tax services and other permissible services, based on specified project and service details, fee estimates, and aggregate fee limits for each service category. The Audit Committee receives information on the status of services provided or to be provided by the independent registered public accounting firm and the related fees. All of the services performed by our independent registered public accounting firm in 2018 and 2017 were pre-approved by the Audit Committee.

AUDIT COMMITTEE REPORT

The following is the report of the Audit Committee with respect to our audited financial statements for 2018, which include our consolidated balance sheets as of December 31, 2018 and 2017, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2018, and the notes thereto.

Composition. The Audit Committee of the Board is comprised of three independent directors and operates under a written charter adopted by the Board. The Board adopted the charter in February 2019. The members of the Audit Committee currently are Mr. Rinaldini and Ms. O'Connell and Wolanyk. The Board determined that each member of the Audit Committee meets the independence requirements of the Nasdaq Stock Market and of Section 10A of the Exchange Act, that each member is able to read and understand financial statements, and that each of Mr. Rinaldini, Ms. O'Connell and Ms. Wolanyk qualifies as an "audit committee financial expert," as defined by Item 407(d)(5)(ii) of Regulation S-K.

Responsibilities. The responsibilities of the Audit Committee include recommending to the Board an accounting firm to be engaged as our independent registered public accounting firm. Management has primary responsibility for preparing the financial statements and designing and assessing the effectiveness of internal control over financial reporting. Grant Thornton LLP, our independent registered public accounting firm, is responsible for performing an independent audit of our consolidated financial statements and internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United States) and for issuing reports thereon. The Audit Committee's responsibility is to oversee these processes.

Review with Management and Grant Thornton. The Audit Committee has reviewed our consolidated audited financial statements and held discussions with management and Grant Thornton LLP. Management represented to the Audit Committee that our consolidated financial statements were prepared in accordance with generally accepted accounting principles. The Audit Committee discussed with Grant Thornton LLP matters required to be discussed by the applicable requirements of the Public Company Accounting Oversight Board and the SEC.

Grant Thornton LLP also provided to the Audit Committee the written disclosures and the letter required by the Public Company Accounting Oversight Board for independent auditor communications with audit committees concerning independence.

Conclusion. Based upon the Audit Committee's discussions with management and Grant Thornton LLP, the Audit Committee's review of the representations of management and the report of Grant Thornton LLP to the Audit Committee, the Audit Committee recommended that the Board include the audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2018, as filed with the SEC.

This report is submitted by the Audit Committee of the Board.

*Maureen O'Connell
Luis E. Rinaldini
Katharine Wolanyk*

ADVISORY VOTE ON THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS**Background**

As required by Section 14A of the Exchange Act, the Board is submitting a separate resolution for our stockholders to approve on an advisory basis the compensation of our named executive officers. This is an opportunity for our stockholders, through what is commonly referred to as a "say-on-pay" vote, to endorse or not endorse our executive compensation program. At each of our annual meetings of stockholders from 2011 to 2018, we provided our stockholders with the same opportunity to cast an advisory vote on the compensation of our named executive officers as disclosed in the Proxy Statement for each meeting. We have considered the results of those votes in structuring our compensation programs and practices. We are providing our stockholders with the same opportunity to cast an advisory vote on the compensation of our named executive officers at the Annual Meeting.

Summary

We are asking our stockholders to approve on an advisory basis the compensation of our named executive officers, as such compensation is described in the "Executive Compensation and Related Information" section, the Summary Compensation Table and the other related tables and disclosure set forth in this Proxy Statement. In addition to the information set forth below, we urge our stockholders to review the entire "Executive Compensation and Related Information" section of this Proxy Statement for more information regarding the compensation of our named executive officers.

Our executive compensation programs are designed to attract, motivate and retain our named executive officers, who are critical to our success. Under these programs, our named executive officers are rewarded for the achievement of long-term and strategic goals and the realization of increased stockholder value.

Our Compensation Committee continually reviews the compensation programs for our named executive officers to ensure that the compensation programs achieve the desired goals of aligning our executive compensation structure with our stockholders' interests. We are asking our stockholders to indicate their support for our named executive officer compensation as described in this Proxy Statement. This proposal gives our stockholders the opportunity to express their views on the compensation of our named executive officers. This vote is not intended to address any specific item of compensation, but rather the overall compensation of our named executive officers and our compensation philosophy, policies and practices described in this Proxy Statement pursuant to the compensation disclosure rules of the SEC.

Required Vote

We believe that the information provided above and in the "Executive Compensation and Related Information" section, the Summary Compensation Table and the other related tables and disclosure set forth in this Proxy Statement demonstrates that our executive compensation program effectively ensures that the interests of our named executive officers are aligned with the interests of our stockholders and with our short- and long-term goals.

You have the opportunity to vote "for" or "against" or to "abstain" from voting on the following non-binding resolution relating to the compensation of our named executive officers:

"RESOLVED, that the stockholders of Acacia Research Corporation approve, on an advisory basis, the compensation of the named executive officers of Acacia Research Corporation as disclosed in Acacia Research Corporation's Definitive Proxy Statement for the 2019 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the "Executive Compensation and Related Information" section, the Summary Compensation Table, and the other related tables and disclosure."

The advisory vote on the compensation of our named executive officers is not binding on us, our Compensation Committee or our Board. However, we value the opinions of our stockholders on executive compensation matters. We have considered and will continue to consider our stockholders' concerns and have evaluated and will continue to evaluate the appropriate actions to address those concerns.

The affirmative vote of the holders of a majority of the outstanding shares of our common stock present in person or by proxy and entitled to vote at the Annual Meeting is required to approve the compensation of our named executive officers.

This proposal is considered a non-routine matter under applicable rules. A broker, bank or other nominee may not vote without instructions on this matter, so there may be broker non-votes in connection with this proposal. Broker non-votes will have no effect on this proposal. Abstentions will be the equivalent of a vote against this proposal.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT OUR STOCKHOLDERS VOTE "FOR" APPROVAL OF THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS, AS DISCLOSED IN THE "EXECUTIVE COMPENSATION AND RELATED INFORMATION" SECTION, COMPENSATION TABLES AND NARRATIVE DISCUSSION SET FORTH IN THIS PROXY STATEMENT. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN ACCORDANCE WITH THE BOARD'S RECOMMENDATION UNLESS A STOCKHOLDER HAS INDICATED OTHERWISE ON THE PROXY.

OTHER MATTERS

We know of no other matters to be submitted to the stockholders at the Annual Meeting. If any other matters properly come before the stockholders at the Annual Meeting, it is the intention of the persons named on the enclosed proxy card to vote the shares they represent as the Board may recommend.

**SECURITY OWNERSHIP OF CERTAIN
BENEFICIAL OWNERS AND MANAGEMENT**

The following tables set forth certain information known to us with respect to the beneficial ownership of our common stock as of May 22, 2019, by (i) all persons known to us to beneficially own five percent (5%) or more of our common stock, (ii) each of our directors, (iii) each of our named executive officers as identified in the "Summary Compensation Table" of the "Executive Compensation and Related Information" section of this Proxy Statement, and (iv) all directors and executive officers as a group.

Beneficial Owner	Common Stock, Restricted Stock and Restricted Stock Units	Shares of Common Stock Issuable Upon Exercise of Options ⁽³⁾	Amount of Direct Beneficial Ownership of Common Stock	Amount of Indirect Beneficial Ownership of Common Stock	Percent of Class ⁽¹⁾
Named Executive Officers⁽²⁾:					
Marc W. Booth	40,000	—	40,000	—	*
Clayton J. Haynes ⁽⁴⁾	138,548	623,398	761,946	—	1.52%
Robert B. Stewart, Jr. ⁽⁵⁾	52,500	—	52,500	—	*
Edward J. Treska ⁽⁴⁾	90,294	577,429	667,723	—	1.33%
Directors⁽²⁾:					
C. Allen Bradley, Jr. ⁽⁶⁾	38,462	—	38,462	—	*
Clifford Press	38,462	—	38,462	—	*
Alfred V. Tobia, Jr.	38,462	—	38,462	1,200,000	2.47%
Maureen O'Connell	22,436	—	22,436	—	*
Katharine Wolanyk	22,436	—	22,436	—	*
Isaac T. Kohlberg	6,410	—	6,410	—	*
Luis E. Rinaldini	6,410	—	6,410	—	*
All Directors and Executive Officers as a Group (eleven persons)	494,420	1,200,827	1,695,247	1,200,000	5.78%

* Less than one percent

(1) The percentage of shares beneficially owned is based on 50,064,281 shares of our common stock outstanding as of May 22, 2019. Beneficial ownership is determined under the rules and regulations of the SEC. Shares of common stock subject to options that are currently exercisable, or exercisable within 60 days after May 22, 2019, are deemed to be outstanding and beneficially owned by the person holding such options for the purpose of computing the number of shares beneficially owned and the percentage ownership of such person, but are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. Except as indicated in the footnotes to this table, and subject to applicable community property laws, we believe that such persons have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them.

(2) The address for each of our directors and executive officers is our principal office located at Acacia Research Corporation, 120 Newport Center Drive, Newport Beach, California 92660.

(3) Includes shares of common stock issuable upon exercise of options that are currently exercisable or may become exercisable within 60 days of May 22, 2019. Such options will expire on July 1, 2019 in connection with the termination of each of the Haynes Consulting Agreement and Treska Consulting Agreement.

- (4) Ownership as of August 10, 2018, the date of Messrs. Haynes and Treska's termination, with respect to "Common Stock, Restricted Stock and Restricted Stock Units".
- (5) Ownership as of September 7, 2018, the date of Mr. Stewart's termination with respect to "Common Stock, Restricted Stock and Restricted Stock Units" and as of May 22, 2019 with respect to "Shares of Common Stock Issuable Upon Exercise of Options."
- (6) Ownership as of May 8, 2019, the date of Mr. Bradley's resignation from the Board.

Beneficial Owner	Amount and Nature of Beneficial Ownership of Common Stock					Aggregate Ownership	Total	Percent of Class ⁽¹⁾
	Sole Voting Power	Shared Voting Power	Sole Dispositive Power	Shared Dispositive Power				
5% Stockholders:								
BlackRock, Inc. ⁽²⁾	2,539,089	—	2,604,770	—	2,604,770	2,604,770	2,604,770	5.20%
Heartland Advisors, Inc. ⁽³⁾	—	2,601,792	—	2,601,792	2,601,792	2,601,792	2,601,792	5.20%
Ariel Investments, LLC ⁽⁴⁾	—	1,065,668	—	2,514,463	2,514,463	2,514,463	2,514,463	5.02%
Bank of Montreal ⁽⁵⁾	2,607,935	10,195	2,790,583	150,111	2,949,747	2,949,747	2,949,747	5.89%
Renaissance Technologies LLC ⁽⁶⁾	3,338,800	—	3,338,800	—	3,338,800	3,338,800	3,338,800	6.67%

- (1) The percentage of shares beneficially owned is based on 50,064,281 shares of our common stock outstanding as of May 22, 2019. Beneficial ownership is determined under rules and regulations of the SEC.
- (2) The information reported is based solely on a Schedule 13G/A filed with the SEC by BlackRock, Inc. on February 4, 2019. According to the Schedule 13G/A, the address for BlackRock Inc. is 55 East 52nd Street, New York, New York 10055.
- (3) The information reported is based solely on a Schedule 13G/A filed jointly with the SEC by Heartland Advisors, Inc. on February 5, 2019. According to the Schedule 13G/A, the address for Heartland Advisors, Inc. is 789 North Water Street Milwaukee, Wisconsin 53202.
- (4) The information reported is based solely on a Schedule 13G/A filed with the SEC by Ariel Investments, LLC on February 14, 2019. According to the Schedule 13G, the address for Ariel Investments, LLC is 200 E. Randolph Street, Suite 2900, Chicago, Illinois 60601.
- (5) The information reported is based solely on a Schedule 13G/A filed with the SEC by Bank of Montreal on February 13, 2015. According to the Schedule 13G/A, the address for Bank of Montreal is 1 First Canadian Place, Toronto, Ontario, Canada MSX 1A1. The total for Bank of Montreal includes 8,210 shares held in one or more employee benefit plans where BMO Harris Bank N.A., a subsidiary of Bank of Montreal, as directed trustee, may be viewed as having voting or dispositive authority in certain situations pursuant to SEC and Department of Labor regulations or interpretations. Pursuant to Rule 13d-4 under the Act, inclusion of such shares in this statement shall not be construed as an admission that the Reporting Person or its subsidiaries are, for purposes of Section 13(d) or 13(g) of the Act, the beneficial owners of such securities.

(6) The information reported is based solely on a Schedule 13G/A filed with the SEC by Renaissance Technologies LLC on February 13, 2019. According to the Schedule 13G, the address for Renaissance Technologies LLC is 800 Third Ave. New York, NY 10022.

EXECUTIVE COMPENSATION AND RELATED INFORMATION

Executive Summary

This narrative discussion of the compensation policies and arrangement that apply to our named executive officers is intended to assist your understanding of, and to be read in conjunction with, the Summary Compensation Table and related disclosures set forth below. We are a smaller reporting company, and therefore, we are eligible to comply with the executive compensation disclosure rules applicable to a smaller reporting company as defined in applicable SEC rules and regulations.

For the 2018 fiscal year, our named executive officers were as follows:

- Marc W. Booth, our Chief Intellectual Property Officer (engaged August 8, 2018).
- Robert B. Stewart, Jr., our President and our principal executive officer (terminated effective September 7, 2018).
- Clayton J. Haynes, our Chief Financial Officer, Senior Vice President of Finance and Treasurer (terminated effective August 10, 2018).
- Edward J. Treska, our Executive Vice President, General Counsel and Secretary (terminated effective August 10, 2018).

Overview and Objectives of Our Executive Compensation Programs

Our compensation policies for executive officers seek to align our executive officers' interests and motivations with those of our stockholders by rewarding both short and long-term objectives. Overall compensation of our executive officers should provide a competitive level of total compensation that enables us to attract, retain and incentivize highly qualified executive officers with the background and experience necessary to lead the company and achieve its business goals.

On February 12, 2018, our former Compensation Committee approved the 2018 executive compensation program. The 2018 executive compensation plan (the "2018 Compensation Plan") provided a target pay mix (as a percentage of total compensation), on average for all the three named executive officers previously employed at the time the 2018 Compensation Plan was approved of 42% base salary, 4% annual short-term incentive, and 54% long-term incentive.

Base Salary

The base salaries of our named executive officers in fiscal year 2018 were:

Name of Executive	Position	Base Salary
Marc W. Booth ⁽¹⁾	Chief Intellectual Property Officer	\$ 250,000
Robert B. Stewart, Jr. ⁽³⁾	President	\$ 450,000
Clayton J. Haynes ⁽²⁾	Chief Financial Officer, Senior Vice President of Finance and Treasurer	\$ 412,000
Edward J. Treska ⁽²⁾	Executive Vice President, General Counsel and Secretary	\$ 440,000

(1) Mr. Booth was engaged effective August 8, 2018.

(2) Messrs. Haynes and Treska were terminated effective August 10, 2018.

(3) Mr. Stewart was terminated effective September 7, 2018.

Annual Incentive Compensation

The Compensation Committee awarded the following cash awards to our named executive officers in fiscal year 2018:

Named Executive Officer	Discretionary Bonus	
Marc W. Booth ⁽¹⁾	\$	254,808
Edward J. Treska ⁽²⁾	\$	246,842

- (1) Mr. Booth received a discretionary bonus of \$250,000 at the end of fiscal year 2018. Consistent with our practice in prior years, all of our employees, including each of our named executive officers that was serving as of the end of fiscal year 2018, received a year-end holiday bonus equal to one week's salary. As a result, Mr. Booth received a year-end holiday bonus of \$4,808.
- (2) Mr. Treska was paid bonuses of \$230,940 and \$15,902 for expanded efforts relating to licensing transactions in the first and second quarters of 2018, respectively. Mr. Treska was terminated effective August 10, 2018.

Equity Compensation

To align compensation with long term performance, our equity compensation plan allows for the grant of stock options and restricted stock awards to our named executive officers and other employees. Each named executive officer is eligible to be considered for an annual equity award.

The chart below shows the number of equity grants to our named executive officer during the 2018 fiscal year. Messrs. Haynes and Treska were terminated effective August 10, 2018 and Mr. Stewart was terminated effective September 7, 2018:

Name	Number of Fair Market Priced Options ⁽¹⁾	Restricted Stock Awards ⁽⁵⁾
Robert B. Stewart, Jr. ⁽¹⁾	50,000	33,974
Clayton J. Haynes ⁽²⁾⁽³⁾	50,000	33,974
Edward J. Treska ⁽²⁾⁽⁴⁾	50,000	33,974

- (1) One-sixth of the fair market value options vested every six months until Mr. Stewart's termination on September 7, 2018. 8,333 fair market priced options were vested as of the date of termination. As of December 31, 2018, the restricted stock awards have not been delivered.
- (2) One-sixth of the fair market value options vested every six months until Messrs. Haynes and Treska's consulting agreements were terminated on January 1, 2019. 8,333 fair market priced options were vested as of the date of termination of Messrs. Haynes and Treska consulting agreements. The restricted stock awards were delivered to each of Messrs. Haynes and Treska on August 10, 2018.
- (3) On August 8, 2018, Mr. Haynes entered into a consulting agreement (the "Haynes Consulting Agreement") with the Company, the terms of which stipulate that because the Haynes Consulting Agreement was entered into concurrently with Mr. Haynes' termination of employment, any existing stock options granted by the Company to Mr. Haynes prior to the effective date of the Haynes Consulting Agreement would continue to vest throughout the term of the Haynes Consulting Agreement. The Haynes Consulting Agreement was terminated on January 1, 2019.
- (4) On August 8, 2018, Mr. Treska entered into a consulting agreement (the "Treska Consulting Agreement") with the Company, the terms of which stipulate that because the Treska Consulting Agreement was entered into concurrently with Mr. Treska's termination of employment, any existing stock options granted by the Company to Mr. Treska prior to the effective date of the Treska Consulting Agreement would continue to vest throughout the term of the Treska Consulting Agreement. The Treska Consulting Agreement was terminated on January 1, 2019.
- (5) The number of shares subject to certain of these restricted stock awards is currently in dispute.

AIP Profits Interest Units

At its founding, we reserved 40% of the membership interest units of our indirect subsidiary, AIP Operation LLC ("AIP"), a Delaware limited liability company, as "profits interests," which are rights to receive a specified percentage of distributions from AIP after we receive all of our unreturned capital. On February 16, 2017, AIP profits interests units were granted to the following named executive officers, as follows:

Name	Number of AIP Profits Interest Units ⁽¹⁾	Percentage Interest ⁽¹⁾
Robert B. Stewart, Jr.	110	11%
Edward J. Treska	110	11%
Clayton J. Haynes	70	7%

- (1) G. Louis Graziadio, III was also granted 110 AIP profits interest units, or 11%, as described above in footnote 7 to the "2018 Director Compensation Table" on page 13 of this Proxy Statement.
- (2) Messrs. Haynes and Treska were terminated effective August 10, 2018. Mr. Stewart was terminated effective September 7, 2018. The Company has a purchase option to purchase the vested profits interest units of Messrs. Haynes, Treska and Stewart. The exercise price of the purchase option is the fair market value of the profits interest units on the date of termination of continuous service. Total liability for all outstanding profits interest units totaled \$591,000 as of December 31, 2018. If the Company does not exercise the purchase option and AIP is eventually dissolved with no assets to distribute, the total liability for any outstanding profits interests units will be zero.

For additional information regarding the AIP profits interests units, refer to Note 9 in the consolidated financial statements of our Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

Employee Benefits and Perquisites

The named executive officers participate in our employee benefits programs that are provided to all of our employees, including medical, dental, vision, life, and disability insurance, to the same extent made available to other employees, subject to applicable law. There are no additional benefits or perquisites applicable exclusively to any of the named executive officers.

Separation Agreement and General Release and Consulting Payments

The Company terminated its Employment Agreements with each of Robert B. Stewart, Jr. on September 7, 2018, Edward J. Treska on August 10, 2018 and Clayton J. Haynes on August 10, 2018. In connection with such terminations, the Company (or one of its affiliates) entered into a Separation Agreement and General Release of Claims with each former employee and certain related documents as described below.

Robert B. Stewart, Jr. was terminated as our President effective September 7, 2018. Mr. Stewart and the Company entered into a Separation Agreement and General Release, effective November 12, 2018 (the "Stewart Separation Agreement"), pursuant to which Mr. Stewart received, (i) earned but unpaid base salary in the amount of \$8,654, (ii) a lump sum payment in the amount of \$675,000, representing 18 months of his base salary, (iii) accrued obligations (i.e., accrued vacation pay and reimbursable expenses) totaling \$55,385, (iv) \$37,500, representing the equivalent of Mr. Stewart's one month salary in lieu of notice, (v) reimbursement for COBRA premiums for the continuation of Mr. Stewart's medical and dental coverage for a period of 18 months after his resignation totaling \$27,464 and (vi) that certain Profits Interest Agreement dated February 16, 2017, between Mr. Stewart and AIP Operation LLC, a Delaware limited liability company, shall remain in effect pursuant to its terms.

Edward J. Treska was terminated as our Executive Vice President, General Counsel and Secretary effective August 8, 2018. Mr. Treska and Acacia Research Group LLC, a Texas limited liability company and wholly-owned subsidiary of the Company, entered into a Separation Agreement and General Release, dated as of August 10, 2018 (the "Treska Separation Agreement"), pursuant to which Mr. Treska received, (i) earned but unpaid base salary in the amount of \$8,462, (ii) a lump sum payment in the amount of \$660,000, representing 18 months of his base salary, (iii) accrued obligations (i.e., accrued vacation pay and reimbursable expenses) totaling \$47,871, (iv) \$36,667, representing the equivalent of Mr. Treska's one month salary in lieu of notice, (v) 67,948 shares of Restricted Common Stock pursuant to the terms of the 2016 Acacia Research Corporation Executive Compensation Plan, (vi) reimbursement for COBRA premiums for the continuation of Mr. Treska's medical and dental coverage for a period of 18 months after his resignation totaling \$53,107 and (vii) that certain Profits Interest Agreement dated February 16, 2017, between Mr. Treska and AIP Operation LLC, a Delaware limited liability company, shall remain in effect pursuant to its terms. In connection with the Treska Separation Agreement, Mr. Treska and the Company entered into the Treska Consulting Agreement pursuant to

which Mr. Treska provided consulting services to the Company until January 1, 2019 in exchange for payments of \$25,000 per month.

Clayton J. Haynes was terminated as our Chief Financial Officer, Senior Vice President of Finance and Treasurer effective August 8, 2018. Mr. Haynes and Acacia Research Group LLC, a Texas limited liability company and wholly-owned subsidiary of the Company, entered into a Separation Agreement and General Release, dated as of August 10, 2018 (the "Haynes Separation Agreement"), pursuant to which Mr. Haynes received, (i) earned but unpaid base salary in the amount of \$7,923, (ii) a lump sum payment in the amount of \$618,000, representing 18 months of his base salary, (iii) accrued obligations (i.e. accrued vacation pay and reimbursable expenses) totaling \$50,708, (iv) \$34,333, representing the equivalent of Mr. Haynes' one month salary in lieu of notice, (v) 67,948 shares of Restricted Common Stock pursuant to the terms of the 2016 Acacia Research Corporation Executive Compensation Plan, (vi) reimbursement for COBRA premiums for the continuation of Mr. Haynes' medical and dental coverage for a period of 18 months after his resignation totaling \$43,828 and (vii) that certain Profits Interest Agreement dated February 16, 2017, between Mr. Haynes and AIP Operation LLC, a Delaware limited liability company, shall remain in effect pursuant to its terms. In connection with the Haynes Separation Agreement, Mr. Haynes and the Company entered into the Haynes Consulting Agreement pursuant to which Mr. Haynes provided consulting services to the Company until January 1, 2019 in exchange for payments of \$10,000 per month.

Employment Agreements

We entered into an Employment Agreement with Marc Booth on August 8, 2018 (the "Booth Employment Agreement"), which, among other things, provides for annual base compensation of \$250,000, an annual bonus to be determined by the Board, reimbursement for certain travel expenses and customary benefits provided to all of our employees, including medical, dental, vision, life, and disability insurance, to the same extent made available to other employees, subject to applicable law. The Booth Employment Agreement does not include any severance payments or change of control bonuses.

We do not have any employment agreements or other compensatory plans, contracts or arrangements of any kind with our named executive officers which contain excise tax gross up provisions, guaranteed payment provisions, single trigger change of control provisions, guaranteed escalator provisions, or multi-year terms with auto renewal features. All employment agreements with our named executive officers may be terminated by either party for any reason upon thirty day's advance notice. Upon termination without cause, the named executive officer will be eligible for payment pursuant to the terms of the employment agreement. In addition, the named executive officer is eligible for an annual incentive award equal to a percentage of his or her base salary, payable at the discretion of the Compensation Committee and in accordance with the compensation parameters described herein. The award is based upon personal performance, overall company performance and other factors as detailed above that the Compensation Committee considers. Our employment agreements and severance and change of control arrangements do not provide for the payment of any excise tax gross-up amounts.

We do not have any agreement or arrangement with any named executive officer relating to a change in control of our company other than any provisions for the accelerated vesting of stock awards in their respective stock award agreements as set forth in our employment agreements with the named executive officer.

Other Compensation Policies

Our Insider Trading Policy prohibits directors, officers and employees, including named executive officers, and contractors (collectively, "Covered Persons") from engaging in hedging transactions, such as put or call options, short sales, prepaid variable forward contracts, equity swaps, collars and exchange funds put or call options, collars and exchange funds. In addition, our Insider Trading Policy prohibits Covered Persons from holding Acacia securities in a margin account or otherwise pledge Acacia securities as collateral for a loan without prior approval by the Company.

Summary Compensation

The following table sets forth information concerning all cash and non-cash compensation earned for services rendered in all capacities to us during the last fiscal year for our named executive officers.

SUMMARY COMPENSATION TABLE

Name and Principal Position(s)	Year	Salary (\$)	Bonus (\$) ⁽²⁾	Stock Awards (\$) ⁽¹⁾	Option Awards (\$) ⁽¹⁾	Non- Equity Incentive Plan Compensation ⁽³⁾ (\$)	Non- qualified Deferred Compensation Earnings (\$)	All Other Compensation (\$) ⁽⁴⁾	Total (\$)
Marc W. Booth	2018	94,231	4,808	—	—	250,000	—	37,125	386,164
Chief Intellectual Property Officer	2017	170,288	—	—	—	25,000	—	475,451	670,739
Robert B. Stewart, Jr.	2018	313,462	—	118,909	87,315	—	—	795,349	1,315,035
President	2017	400,000	7,692	—	446,235	400,000	—	79,420	1,333,347
Clayton J. Haynes	2018	259,054	—	133,518	87,315	—	—	793,536	1,273,423
Former Chief Financial Officer, Sr., Vice President	2017	393,978	7,577	—	446,235	266,688	—	50,540	1,165,018
Edward J. Treska	2018	276,538	—	133,518	87,315	246,842	—	914,312	1,658,525
Former Executive Vice President, General Counsel and Secretary	2017	420,000	8,077	—	446,235	481,000	—	79,420	1,434,732

(1) Stock awards consist of restricted stock awards. The number of shares subject to certain of these restricted stock awards is currently in dispute. Option awards consist of incentive and non-qualified stock options. Amounts shown do not reflect compensation actually received by the named executive officer. Instead, the amounts shown represent the aggregate grant date fair value related to equity-based awards granted to the named executive officers during the years indicated, as determined, for financial statement purposes, pursuant to ASC Topic 718. The method used to calculate the aggregate grant date fair value of equity-based awards is set forth under Notes 2 and 9 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

(2) Represents a non-discretionary year-end bonus equal to one week's salary.

(3) Represents incentive payments made pursuant to our cash incentive compensation program and other discretionary bonuses.

(4) For Messrs. Stewart, Haynes and Treska only, "All Other Compensation" in 2017 represents the grant date fair value of profits interest units, as described above under the caption, "AIP Profits Interest Units" beginning on page 42 of this Proxy Statement, which for financial statement purposes are accounted for at fair value in accordance with ASC Topic 718 as set forth under Notes 2 and 9 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017. Amounts shown do not reflect compensation actually received by the named executive officer. Instead, the amounts shown represent the aggregate estimated grant date fair value of the profits interest units granted. Recipients can only realize value from the profits interest if, and only if,

we receive our unreturned capital related to the contribution of the Veritone 10% Warrant and there is a profit actually realized related to the exercise or sale of the Veritone 10% Warrant.

In addition, Messrs Booth, Haynes and Treska received \$37,125, \$46,667 and \$116,667, respectively, in consulting payments in 2018. Mr. Booth received \$11,000 in consulting payments in 2017. Messrs Stewart, Haynes and Treska received \$795,349, \$746,869 and \$797,645, respectively, in severance and related termination payments in 2018. Mr. Booth received \$464,451 in severance and related termination payments in 2017. Mr. Booth was terminated on June 2, 2017 and re-hired on August 8, 2018.

Executive Officers

The table below provides information concerning our executive officers as of the date of this Proxy Statement ⁽¹⁾.

Name	Age	Positions with the Company
Marc W. Booth	61	Chief Intellectual Property Officer

(1) Messrs. Haynes and Treska were terminated effective August 10, 2018. Mr. Stewart was terminated effective September 7, 2018.

Marc W. Booth joined Acacia Research Corporation as its Chief Intellectual Property Officer on August 8, 2018. Mr. Booth has over 10 years of experience in patent analysis/licensing in areas such as semiconductor, telecommunications, consumer electronics and medical devices. Mr. Booth served as the Executive Vice President, General Manager of Acacia Research Group LLC from 2013 to 2017. He joined Acacia in 2006 as Vice President. Prior to joining Acacia, Mr. Booth's career in design and development included positions as Senior Director Engineering of Powerwave Technologies; Vice President Engineering and CTO of Comarco Wireless Technologies and Vice President Engineering, Sony Corporation. He began his engineering career as a Masters Fellow at Hughes Aircraft Co. Display Systems Division. Mr. Booth holds a BS Physics from the University of California Riverside and an MSEE degree from the University of Southern California.

2018 OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

The following table provides information, with respect to the named executive officers, concerning the outstanding equity awards of our common stock at the end of fiscal year 2018.

Name	Option Awards					Stock Awards					
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date ⁽⁴⁾	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$) ⁽²⁾	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)	Grant	Fully Vested ⁽¹⁾
Robert B. Stewart, Jr. ⁽³⁾	156,614	—	—	3.90	3/1/2023	—	—	—	—	3/1/2016	3/1/2019
	187,500	—	—	5.75	8/1/2023	—	—	—	—	8/1/2016	N/A ⁽³⁾
	32,051	—	—	5.40	3/15/2024	—	—	—	—	3/15/2017	3/15/2020
	37,677	—	—	6.75	3/15/2024	—	—	—	—	3/15/2017	3/15/2020
	8,333	—	—	4.00	1/2/2025	—	—	—	—	1/2/2018	1/2/2021
Clayton J. Haynes	79,338	—	—	3.12	3/1/2023	—	—	—	—	3/1/2016	11/20/2018
	187,938	—	—	3.90	3/1/2023	—	—	—	—	3/1/2016	11/20/2018
	208,333	41,667	—	5.75	8/1/2023	—	—	—	—	8/1/2016	5/20/2019
	64,102	32,051	—	5.40	3/15/2024	—	—	—	—	3/15/2017	11/20/2019
	75,354	37,678	—	6.75	3/15/2024	—	—	—	—	3/15/2017	11/20/2019
	8,333	41,667	—	4.00	1/2/2025	—	—	—	—	1/2/2018	1/2/2021
Edward J. Treska ⁽³⁾	79,338	—	—	3.12	3/1/2023	—	—	—	—	3/1/2016	11/20/2018
	187,938	—	—	3.90	3/1/2023	—	—	—	—	3/1/2016	11/20/2018
	187,500	562,500	—	5.75	8/1/2023	—	—	—	—	8/1/2016	N/A ⁽³⁾
	64,102	32,051	—	5.40	3/15/2024	—	—	—	—	3/15/2017	11/20/2019
	75,354	37,678	—	6.75	3/15/2024	—	—	—	—	3/15/2017	11/20/2019
	8,333	41,667	—	4.00	1/2/2025	—	—	—	—	1/2/2018	1/2/2021

(1) Fully vested date assuming continued employment through the final vest date. In connection with the termination of each of the Haynes Consulting Agreement and Treska Consulting Agreement effective as of January 1, 2019, vesting of Messrs. Haynes and Treska's equity awards ended on January 1, 2019. In connection with the termination of Mr. Stewart effective as of September 7, 2019, vesting of Mr. Stewart's equity awards ended on September 7, 2019.

(2) The fair market value of a share of our common stock is assumed to be \$2.98, which was the closing price of our common stock on the Nasdaq Global Select Market on December 31, 2018, the last trading day of 2018.

- (3) 187,500 of Mr. Stewart's vested options expired on March 7, 2019. 562,500 of Mr. Treska's unvested options were canceled on January 1, 2019. Mr Treska's 187,500 vested options will expire on July 1, 2019.
- (4) Option Expiration Date assuming continued employment through the final vest date. In connection with the termination of each of the Haynes Consulting Agreement and Treska Consulting Agreement effective as of January 1, 2019, Messrs. Haynes and Treska's stock options will expire on July 1, 2019. In connection with the termination of Mr. Stewart effective as of September 7, 2019, Mr. Stewart's stock options expired on March 7, 2019.

EQUITY PLAN COMPENSATION PLAN INFORMATION

Equity Compensation Plan Information

The following table provides information with respect to shares of our common stock issuable under our equity compensation plans as of December 31, 2018:

Plan Category	(a) Number of securities to be issued upon exercise of outstanding options	(b) Weighted-average exercise price of outstanding options	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders			
2013 Acacia Research Stock Incentive Plan ⁽¹⁾	1,303,000	\$ 3.62	709,000
2016 Acacia Research Stock Incentive Plan ⁽²⁾	2,206,000	\$ 5.76	3,689,000
Subtotal ⁽³⁾	3,509,000	\$ 4.96	4,398,000

- (1) The initial share reserve under the 2013 Plan, was 4,750,000 shares of our common stock. Column (a) excludes in non-vested restricted stock awards and restricted stock units outstanding at December 31, 2018. In June 2016, 625,390 shares of common stock available for issuance under the 2013 Stock Plan were transferred into the 2016 Stock Plan.
- (2) The initial share reserve under the 2016 Plan was 4,500,000 shares plus 625,390 shares of common stock available for issuance under the 2013 Plan. No new additional shares will be added to the 2016 Plan without stockholder approval (except for shares subject to outstanding awards that are forfeited or otherwise returned to the 2016 Plan).
- (3) As of May 14, 2019, 1,631,000 of the options reported as of December 31, 2018 have been canceled or expired. Shares allocable to such canceled or expired options are again available for grant or issuance pursuant to the 2013 Plan or 2016 Plan, as applicable. On May 8, 2019, 383,078 shares of restricted stock were granted from the 2013 Plan.

Certain Relationships and Related Transactions

We do not have a formal policy for review, approval or ratification of related party transactions required to be reported in this Proxy Statement. However, we have adopted a corporate Code of Conduct for Employees and Directors which applies to all of our employees, officers, and directors and a Code of Conduct for Chief Executive Officer and Other Senior Financial Officers additional code that specifically applies to our principal executive officer, principal financial officer and accounting officer and controller or persons performing similar functions. Each Code of Conduct provides obligations and prohibitions on any related party transactions which cause our employees, officers or directors to face a choice between what is in their personal interest and what is in our interest. The corporate Code of Conduct requires conflicts of interest which result from investments in companies doing business with us or in one of our competitors to be disclosed to our General Counsel or a member of the Audit Committee and approved by the Board. The corporate Code of Conduct requires employees, officers, and directors that are conducting our business with family members to disclose such transactions to our General Counsel or a member of the Audit Committee. Such transactions are generally prohibited unless approved by the Board.

We review the questionnaires completed by our directors and executive officers annually. If any related party transactions are reported, management reviews the transactions and consults with the Board. Since January 1, 2016, there has not been any transaction or series of similar transactions to which we were or are a party in which the amount involved exceeded or exceeds \$120,000 and in which any director, executive officer, holder of more than 5% of any class of our voting securities, or any member of the immediate family of any of the foregoing persons, had or will have a direct or indirect material interest, other than the August 2016 arrangement we entered into with Second Southern Corp. ("Second Southern"), a company wholly owned by Mr. Graziadio and which he serves as President ("Second Southern Agreement"). Pursuant to the Second Southern Agreement, in October 2016, we made a one-time payment of \$250,000 to Second Southern, and agreed thereafter to pay Second Southern a fee of \$250,000 per year (payable on a quarterly basis commencing in the third quarter of 2016). Accordingly, as previously disclosed, payments during 2016 under the Second Southern Agreement totaled \$375,000. Pursuant to the Second Southern Agreement, we made payments totaling \$250,000 for fiscal 2017 and payments totaling \$62,500 for fiscal year 2018. The Second Southern Agreement was terminated by the Company on July 5, 2018.

During the year ended December 31, 2018, the Company paid \$976,000 in expenses related to the reimbursement of costs incurred by Sidus Investment Management, LLC ("Sidus") on behalf of the participants (together with Sidus, the "Participants") named in the proxy statement filed on June 7, 2018 by the Participants, in connection with a contested proxy election. These expenses are included in general and administrative expenses on the consolidated statements of operations. Alfred V. Tobia, Jr. and Clifford Press are related parties as each of them are Participants and members of the Company's Board of Directors. In addition, Sidus is a related party as Mr. Tobia is a Co-Founder and Managing Member at Sidus.

Indemnification Agreements with Directors and Officers. In addition to the indemnification provisions contained in our Certificate of Incorporation and Bylaws, each as amended to date, we have entered into separate indemnification agreements with each of our directors and officers. These agreements require us, among other things, to indemnify each such director or officer against expenses (including attorneys' fees), damages, judgments, fines, penalties and settlements paid by such individual in connection with any action, suit or proceeding arising out of such individual's status or service as our director or officer (other than liabilities with respect to which such individual receives payment from another source, arising in connection with certain final legal judgments, arising from willful misconduct or conduct that is knowingly fraudulent or deliberately dishonest, or which we are prohibited by applicable law from paying) and to advance expenses incurred by such individual in connection with any proceeding against such individual with respect to which such individual may be entitled to indemnification by us.

Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires our directors, executive officers and holders of more than 10% of our common stock to file with the SEC initial reports of ownership and reports of changes in ownership of our common stock. We believe that, based on the written representations of our directors and officers, and the copies of reports filed with the SEC during the fiscal year ended December 31, 2018, our directors, officers and holders of more than 10% of our common stock complied with the requirements of Section 16(a) except that a Form 3 report was filed late on July 3, 2018 on behalf of Paul Falzone, a Form 3 report was filed late on July 3, 2018 on behalf of Joseph E. Davis and two Form 4 reports were filed late on December 6, 2018 and February 14, 2019 on behalf of Alfred V. Tobia, Jr. to disclose reportable transactions.

Form 10-K

On March 15, 2019, we filed with the SEC an Annual Report on Form 10-K for the fiscal year ending December 31, 2018. A copy of our Annual Report on Form 10-K has been mailed concurrently with this Proxy Statement to all stockholders

entitled to notice of and to vote at the Annual Meeting. The Annual Report on Form 10-K is not incorporated into this Proxy Statement and is not considered proxy solicitation material.

Householding

We have adopted a procedure, approved by the SEC, called "householding." Under this procedure, stockholders of record who have the same address and last name and do not participate in electronic delivery of proxy materials will receive only one copy of this Notice of Annual Meeting and Proxy Statement and our Annual Report on Form 10-K, unless we are notified that one or more of these stockholders wishes to continue receiving individual copies. This procedure will reduce our printing costs and postage fees. Stockholders who participate in householding will continue to receive separate proxy cards.

If you are eligible for householding, but you and other stockholders of record with whom you share an address currently receive multiple copies of this Notice of Annual Meeting and Proxy Statement and any accompanying documents, or if you hold our stock in more than one account, and in either case you wish to receive only a single copy of each of these documents for your household, please contact our Corporate Secretary at (949) 480-8300 or write to him at Acacia Research Corporation, 120 Newport Center Drive, Newport Beach, California 92660.

If you participate in householding and wish to receive a separate copy of this Notice of Annual Meeting and Proxy Statement and any accompanying documents, or if you do not wish to continue to participate in householding and prefer to receive separate copies of these documents in the future, please contact our Corporate Secretary as indicated above. Upon your written or oral request, we will promptly deliver you a separate copy of this Notice of Annual Meeting and Proxy Statement and accompanying documents.

If you are a beneficial owner, you can request information about householding from your broker, bank or other holder of record.

Stockholder Proposals for the 2020 Annual Meeting

Under Rule 14a-8 of the Exchange Act, any stockholder desiring to include a proposal in our Proxy Statement with respect to the 2020 Annual Meeting should arrange for such proposal to be delivered to us at our principal place of business (120 Newport Center Drive, Newport Beach, California 92660) no later than 11:59 p.m. on the 120th day prior to the first anniversary of the 2019 Annual Meeting, in order to be considered for inclusion in our Proxy Statement relating to such annual meeting. Matters pertaining to such proposals, including the number and length thereof, and the eligibility of persons entitled to have such proposals included, are regulated by Rule 14a-8 of the Exchange Act, the rules and regulations of the SEC and other laws and regulations to which interested persons should refer.

In order for a stockholder proposal not intended to be subject to Rule 14a-8 (and thus not subject to inclusion in our Proxy Statement) to be considered "timely" within the meaning of Rule 14a-4 under the Exchange Act, and pursuant to our Bylaws, notice of any such stockholder proposals must be delivered to our Secretary in writing at our principal place of business not less than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the 2019 Annual Meeting, after which a proposal is untimely. In the event that the date of the 2020 Annual Meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to the 2020 Annual Meeting and not later than the close of business on the later of the 90th day prior to the 2020 Annual Meeting or the 10th day following the day on which public announcement of the date of the 2020 Annual Meeting is first made by us. A stockholder's notice to the Secretary must set forth for each matter proposed to be brought before the annual meeting (a) a brief description of the matter the stockholder proposes to bring before the meeting and the reasons for conducting such business at the meeting, (b) the name and address of the stockholder proposing such business, (c) the number of shares of our common stock which are beneficially owned by the stockholder, and (d) any material interest of the stockholder in such business.

n By Order of the Board of Directors,

Jennifer Graff
Secretary

▼ TO VOTE BY MAIL, PLEASE DETACH HERE ▼

ACACIA RESEARCH CORPORATION

Annual Meeting of Stockholders – [•], 2019

This Proxy is Solicited on Behalf of the Board of Directors of Acacia Research Corporation

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The undersigned revokes all previous proxies, acknowledges receipt of the Notice of the Annual Meeting of Stockholders and the accompanying Proxy Statement and appoints Marc W. Booth, Clifford Press and Alfred V. Tobia, Jr. and each of them, the Proxy of the undersigned, with full power of substitution and revocation, to vote all shares of Common Stock held of record by the undersigned on the record date either on his or her own behalf of any entity or entities, at the Annual Meeting of Stockholders of Acacia Research Corporation (the “Company”) to be held on [•], or any postponements or adjournments thereof, with the same force and effect as the undersigned might or could do if personally present thereat. The shares represented by the Proxy shall be voted in a manner set forth on the reverse side.

THIS PROXY WHEN PROPERLY SIGNED, DATED AND RETURNED, WILL BE VOTED AS DIRECTED, UNLESS OTHERWISE DIRECTED, THIS PROXY WILL BE VOTED FOR THE ELECTION OF THE DIRECTOR NOMINEES and FOR PROPOSALS 2, 3, 4, 5, 6, 7 and 8.

IMPORTANT: PLEASE SIGN, DATE AND MAIL THIS PROXY CARD PROMPTLY!

CONTINUED AND TO BE SIGNED ON REVERSE SIDE.

▼ TO VOTE BY MAIL, PLEASE DETACH HERE ▼

Please mark your vote as in this example

THIS PROXY WILL BE VOTED FOR THE ELECTION OF THE DIRECTOR NOMINEES and FOR PROPOSALS 2, 3, 4, 5, 6, 7 and 8.

1. The election of two Class 1 directors to serve on our Board for a term of three years expiring upon the 2022 Annual Meeting of Stockholders or until their respective successors are duly elected and qualified, or, if Proposal No. 2 is approved, to serve on our Board of Directors for a term of one year expiring upon the 2020 Annual Meeting of Stockholders;

FOR AGAINST ABSTAIN
FOR AGAINST ABSTAIN
FOR AGAINST ABSTAIN

Katharine Wolanyk
Isaac T. Kohlberg

2. To approve an amendment to the Amended and Restated Certificate of Incorporation to provide for a disclassified Board of Directors such that all members of our Board of Directors shall be elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders;

FOR AGAINST ABSTAIN
FOR AGAINST ABSTAIN

3. To approve an amendment to the Amended and Restated Certificate of Incorporation to eliminate supermajority vote requirements for specified corporate actions;

FOR AGAINST ABSTAIN
FOR AGAINST ABSTAIN

4. To approve an amendment to the Amended and Restated Certificate of Incorporation to grant stockholders the right to call special meetings of the stockholders;

FOR AGAINST ABSTAIN

5. To approve an amendment to the Amended and Restated Certificate of Incorporation to implement certain transfer restrictions to preserve tax benefits associated with our net operating losses;

FOR AGAINST ABSTAIN

6. To ratify the adoption of our Tax Benefits Preservation Plan;

FOR AGAINST ABSTAIN

7. To ratify the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2019;

FOR AGAINST ABSTAIN

8. To approve, by advisory vote, the compensation of our named executive officers;

FOR AGAINST ABSTAIN

9. To transact such other business as may properly come before the Annual Meeting or at any postponement or adjournment thereof.

Dated: _____, 2019

Signature of Stockholder

Signature of Stockholder (if held jointly)

(Title)

NOTE: Please sign exactly as your name is printed. Each joint tenant should sign. Executors, administrators, trustees and guarantors should give full titles when signing. Corporations and partnerships should sign in full corporate or partnership name by authorized person. Please mark, sign, date and return your proxy promptly in the pre-paid enclosed business reply envelope, which requires no postage if mailed in the United States.

SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
ACACIA RESEARCH CORPORATION

Acacia Research Corporation, a corporation organized and existing under the laws of the State of Delaware (the Corporation), certifies that:

A. The name of the Corporation is Acacia Research Corporation. The Corporations original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 8, 1999.

B. This Second Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restated, integrates, and further amends the provisions of the Corporations Certificate of Incorporation.

C. The text of the Amended and Restated Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Acacia Research Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by [_____] , a duly authorized officer of the Corporation, on [_____] , 2019.

[_____]
[OFFICE]



EXHIBIT A

ARTICLE I NAME

The name of the corporation is Acacia Research Corporation (the "Corporation").

ARTICLE II ADDRESS OF REGISTERED OFFICE; NAME OF REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware 32 W. Loockerman Street, Suite 201, Dover, County of Kent, Delaware. The name of its registered agent at such address is Registered Agent Solutions, Inc.

ARTICLE III PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the "DGCL").

ARTICLE IV CAPITAL STOCK

SECTION 1. AUTHORIZATION. The aggregate number of shares of stock which the Corporation shall have authority to issue is one hundred and ten million (110,000,000) shares, of which one hundred million shares shall be shares of common stock having a par value of \$0.001 per share (the "Common Stock"), and ten million (10,000,000) shares shall be shares of preferred stock having a par value of \$0.001 per share (the "Preferred Stock") and issuable in one or more series as hereinafter provided. For purposes of this ARTICLE IV, references to the "Board of Directors" shall refer to the Board of Directors of the Corporation, as established in accordance with ARTICLE V of the certificate of incorporation of the Corporation, and references to "the Certificate of Incorporation" shall refer to this Second Amended and Restated Certificate of Incorporation as the same may be amended from time to time. The number of authorized shares of any class or classes of capital stock of the Corporation may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation entitled to vote generally in the election of directors.

SECTION 2. COMMON STOCK. The voting powers, preferences and relative, participating, optional or other special rights of the Common Stock, and the qualifications and restrictions thereon, shall be as follows in this Section 2.

2.1 Dividends. Subject to the rights, preferences, privileges, restrictions and other matters pertaining to the Preferred Stock that may at that time be outstanding, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefore, such dividends as may be declared from time to time by the Board of Directors.

2.2 Voting Rights. Except as otherwise required by law, or as otherwise fixed by resolution or resolutions of the Board of Directors with respect to one or more series of Preferred

Stock, the entire voting power and all voting rights shall be vested exclusively in the Common Stock, and each stockholder of the Corporation who at the time possesses voting power for any purpose shall be entitled to one vote for each share of such stock standing in his or her name on the books of the Corporation.

2.3 Liquidation Rights. In the event of any liquidation, dissolution or winding up (either voluntary or involuntary) of the Corporation, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors and to the holders of any Preferred Stock of the Corporation that may at the time be outstanding, in proportion to the number of shares held by them. Neither the merger nor consolidation of the Corporation into or with any other corporation, nor a sale, transfer or lease of all or any part of the assets of the Corporation, shall, alone, be deemed a liquidation or winding up of the Corporation or cause the dissolution of the Corporation, for purposes of this Section 2.3.

SECTION 3. PREFERRED STOCK. The Preferred Stock may be issued from time to time in one or more series, each with such distinctive designation as may be stated in the Certificate of Incorporation or in any amendment hereto, or in a resolution or resolutions providing for the issue of such stock from time to time adopted by the Board of Directors or a duly authorized committee thereof. The resolution or resolutions providing for the issue of shares of a particular series shall fix, subject to applicable laws and the provisions of the Certificate of Incorporation, for each such series the number of shares constituting such series and the designation and the voting powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof, including, without limiting the generality of the foregoing, such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange, and such other subjects or matters as may be fixed by the Board of Directors or a duly authorized committee thereof under the DGCL.

ARTICLE V BOARD OF DIRECTORS

SECTION 1. NUMBER OF DIRECTORS AND THEIR ELECTION. The number of directors of the Corporation shall be fixed from time to time by a by-law of the Corporation or amendment thereof duly adopted by the Board of Directors. Except as otherwise provided for or fixed pursuant to the provisions of ARTICLE V of this Certificate of Incorporation or any resolution or resolutions of the Board of Directors providing for the issuance of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect additional directors under specified circumstances, the number of directors shall be determined by the Board of Directors in accordance with the By-laws of the Corporation. Election of directors need not be by written ballot, unless so provided in the By-laws of the Corporation.

SECTION 2. POWERS OF THE BOARD OF DIRECTORS. In furtherance, and not in limitation, of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, alter, amend and repeal the By-laws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any by-law whether adopted by them or otherwise; provided, however, that the affirmative vote of a majority of the voting power of the capital stock of the Corporation entitled to vote thereon shall be required for stockholders to adopt, amend, alter or repeal any provision of the By-laws of the Corporation.



SECTION 3. TERM. The directors, other than those who may be elected by the holders of Preferred Stock or any other class or series of stock having a preference over the Common Stock as to dividends or upon liquidation pursuant to the terms of this Certificate of Incorporation or any resolution or resolutions providing for the issuance of such class or series of stock adopted by the Board of Directors, shall be elected by stockholders at each annual meeting of stockholders to hold office for a term expiring at the next annual meeting of stockholders and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

SECTION 4. VACANCIES. Any newly-created directorship resulting from an increase in the authorized number of directors or any vacancies in the Board of Directors occurring by reason of death, resignation, retirement, disqualification or removal may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director. A director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term expiring at the next annual meeting of the stockholders and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

ARTICLE VI STOCKHOLDER ACTIONS

SECTION 1. MEETINGS AND RECORDS. Meetings of stockholders may be held within or without the State of Delaware, as the By-laws of the Corporation may provide. The books of the Corporation may be kept (subject to the DGCL) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

SECTION 2. SPECIAL MEETINGS. Special meetings of stockholders may be called at any time by the Board of Directors or by the Chairman of the Board of Directors, or the President, or the Secretary of the Corporation upon the written request of one or more stockholders of record of the Corporation that hold at least twenty-five percent (25%) in voting power of the outstanding shares of stock of the Company and who have delivered such requests in accordance with and subject to the procedures and conditions and any other provisions set forth in the By-laws of the Corporation (as amended from time to time), including any limitations set forth in the By-laws of the Corporation on the ability to make such a request for such a special meeting.

SECTION 3. WRITTEN CONSENTS. No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of the stockholders may be effected by written consent of the stockholders in lieu of a meeting of stockholders.

ARTICLE VII LIMITATION ON LIABILITY OF DIRECTORS

No person shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, including without limitation for serving on a committee of the Board of Directors, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. If the DGCL is amended after the date of the filing of this Certificate of Incorporation 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 DGCL as so amended. Any amendment, repeal or modification of this ARTICLE VII shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such amendment, repeal or modification.

ARTICLE VIII INDEMNIFICATION

SECTION 1. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, his or her testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation. No amendment, repeal or modification of this ARTICLE VIII by the stockholders shall adversely affect any right or protection of a director of the Corporation existing by virtue of this ARTICLE VIII at the time of such amendment, repeal or modification.

ARTICLE IX AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation hereby reserves the right from time to time to amend, alter, change or repeal any provision contained in the Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law, and all rights, preferences, and privileges of whatsoever nature conferred upon the stockholders, directors or any other persons whomsoever by or pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this ARTICLE IX.

ARTICLE X

SECTION 1. DEFINITIONS.

As used in this ARTICLE X, the following capitalized terms have the following meanings when used herein with initial capital letters (and any references to any portions of Treas. Reg. § 1.382-2T shall include any successor provisions):

(a) “4.899-percent Transaction” means any Transfer described in clause (a) or (b) of Section 2 of this ARTICLE X.

(b) “4.899-percent Stockholder” means a Person or group of Persons that is a “5-percent stockholder” of the corporation pursuant to Treas. Reg. § 1.382-2T(g), as applied by replacing “5-percent” with “4.899-percent” and “five percent” with “4.899 percent,” where applicable.

(c) “Agent” has the meaning set forth in Section 5 of this ARTICLE X.

(d) “Code” means the United States Internal Revenue Code of 1986, as amended. For the avoidance of doubt, Code also includes “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” (PL 115-97).

(e) “Corporation Security” or “Corporation Securities” means (i) any Stock, (ii) shares of preferred stock issued by the Corporation (other than preferred stock described in § 1504(a)(4) of the Code), and (iii) warrants, rights, or options (including options within the meaning of Treas. Reg. § 1.382-2T(h)(4)(v) or Treas. Reg. § 1.382-4(d)(9)) to purchase securities of the Corporation.

(f) “Effective Date” means the date of filing of this Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware.

(g) “Excess Securities” has the meaning set forth in Section 4 of this ARTICLE X.

(h) “Expiration Date” means the earliest of (i) the close of business on the date that is the third anniversary of the Effective Date, (ii) the repeal of Section 382 of the Code or any successor statute if the Board of Directors determines that this ARTICLE X is no longer necessary or desirable for the preservation of Tax Benefits, (iii) the close of business on the first day of a taxable year of the Corporation as to which the Board of Directors determines that no Tax Benefits may be carried forward, and (iv) such date as the Board of Directors shall fix in accordance with Section 12 of this ARTICLE X.

(i) “Percentage Stock Ownership” means the percentage Stock Ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Code as determined in accordance with Treas. Reg. § 1.382-2(a)(3), Treas. Reg. § 1.382-2T(g), (h), (j) and (k) and Treas. Reg. § 1.382-4, or any successor provisions and other pertinent Internal Revenue Service guidance.

(j) “Person” means any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association or organization, trust or other entity or any group of such “Persons” having a formal or informal understanding among themselves to make a “coordinated acquisition” of shares within the meaning of Treas. Reg. § 1.382-3(a)(1) or who are otherwise treated as an “entity” within the meaning of Treas. Reg. § 1.382-3(a)(1), and shall include any successor (by merger or otherwise) of any such entity or group.

(k) “Prohibited Distributions” means any and all dividends or other distributions paid by the Corporation with respect to any Excess Securities received by a Purported Transferee.

(l) “Prohibited Transfer” means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this ARTICLE X.

(m) “Public Group” has the meaning set forth in Treas. Reg. § 1.382-2T(f)(13).

(n) “Purported Transferee” has the meaning set forth in Section 4 of this ARTICLE X.

(o) “Remedial Holder” has the meaning set forth in Section 7 of this ARTICLE X.

(p) “Stock” means any interest that would be treated as “stock” of the Corporation pursuant to Treas. Reg. § 1.382-2T(f)(18).

(q) “Stock Ownership” means any direct or indirect ownership of Stock, including any ownership by virtue of application of constructive ownership rules, with such direct, indirect and constructive ownership determined under the provisions of Section 382 of the Code and the Treasury Regulations thereunder, including, for the avoidance of doubt, any ownership whereby a Person owns Stock pursuant to a “coordinated acquisition” treated as a single “entity” as defined in Treas. Reg. § 1.382-3(a)(1), or such Stock is otherwise aggregated with Stock owned by such Person pursuant to the provisions of Section 382 of the Code and the Treasury Regulations thereunder.

(r) “Tax Benefits” means the net operating loss carry forwards, capital loss carry forwards, general business credit carry forwards, alternative minimum tax credit carry forwards, foreign tax credit carry forwards, disallowed net business interest expense carry forwards under Section 163(j), any credits under Section 53, and any other item that may reduce or result in any credit against any income taxes owed by the Corporation or any of its subsidiaries or refundable credits, including, but not limited to, any item subject to limitation under Section 382 or Section 383 of the Code and the Treasury Regulations promulgated thereunder, and any loss or deduction attributable to a “net unrealized built-in loss” within the meaning of Section 382 of the Code and the Treasury Regulations promulgated thereunder.

(s) “Transfer” means, any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition, event or occurrence or other action taken by a Person, other than the Corporation, that alters the Percentage Stock Ownership of any Person or group, including, a transfer by gift or by operation of law. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treas. Reg. §1.382-4(d)). For the avoidance of doubt, a Transfer shall not include the creation or grant of an option by the Corporation, nor shall a Transfer include the issuance of Stock by the Corporation.

(t) “Transferee” means any Person to whom Corporation Securities are Transferred.

(u) “Treasury Regulations” or “Treas. Reg.” means the regulations, including temporary regulations or any successor regulations, promulgated under the Code, as amended from time to time.

SECTION 2. TRANSFER AND OWNERSHIP RESTRICTIONS. In order to preserve the Tax Benefits, from and after the Effective Date any attempted Transfer of Corporation Securities prior to the Expiration Date and any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Expiration Date shall be prohibited and void ab initio to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (a) any Person or Persons would become a 4.899-percent Stockholder or (b) the Percentage Stock Ownership in the Corporation of any 4.899-percent Stockholder would be increased. The prior sentence is not intended to prevent Corporation Securities from being DTC-eligible and shall not preclude the settlement of any transaction in Corporation Securities entered into through the facilities of a national securities exchange; provided, however, that the Corporation Securities and parties involved in such transaction shall remain subject to the provisions of this ARTICLE X in respect of such transaction.

SECTION 3. EXCEPTIONS.

(a) Notwithstanding anything to the contrary herein, Transfers to a Public Group (including a new Public Group created under Treas. Reg. § 1.382-2T (j) (3) (i)) shall be permitted.

(b) The restrictions set forth in Section 2 of this ARTICLE X shall not apply to an attempted Transfer that is a 4.899-percent Transaction if the transferor or the Transferee obtains the written approval of the Board of Directors or a duly authorized committee thereof. As a condition to granting its approval pursuant to this Section 3 of this ARTICLE X, the Board of Directors may, in its discretion, require (at the expense of the transferor and/or Transferee) an opinion of counsel selected by the Board of Directors that the Transfer shall not result in a limitation on the use of the Tax Benefits as a result of the application of Section 382 of the Code; provided that the Board of Directors may grant such approval notwithstanding the effect of such approval on the Tax Benefits if it determines that the approval is in the best interests of the Corporation. The Board of Directors may grant its approval in whole or in part with respect to such Transfer and may impose any conditions that it deems reasonable and appropriate in connection with such approval, including, without limitation, restrictions on the ability of any Transferee to Transfer Stock acquired through a Transfer. Approvals of the Board of Directors hereunder may be given prospectively or retroactively. The Board of Directors, to the fullest extent permitted by law, may exercise the authority granted by this ARTICLE X through duly authorized officers or agents of the Corporation. Nothing in this Section 3 of this ARTICLE X shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

SECTION 4. EXCESS SECURITIES.

(a) No employee or agent of the Corporation shall record any Prohibited Transfer, and the purported transferee of such a Prohibited Transfer (the "Purported Transferee") shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of the Corporation Securities which are the subject of the Prohibited Transfer (the "Excess Securities"). The Purported Transferee shall not be entitled, with respect to such Excess Securities, to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to remain with the transferor unless and until the Excess Securities are transferred to the Agent pursuant to Section 5 of this ARTICLE X or until an approval is obtained under Section 3 of this ARTICLE X. After the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Securities. For this purpose, any Transfer of Excess Securities not in accordance with the provisions of this Section 4 or Section 5 of this ARTICLE X shall also be a Prohibited Transfer.

(b) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to its direct or indirect ownership interests in such Corporation Securities. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement this ARTICLE X, including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of Stock and other evidence that a Transfer will not be prohibited by this ARTICLE X as a condition to registering any transfer.

SECTION 5. TRANSFER TO AGENT. If the Board of Directors determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer, then, upon written demand by the Corporation sent within thirty days of the date on which the Board of Directors determines that the attempted Transfer would result in Excess Securities, the Purported Transferee shall transfer or



cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee's possession or control, together with any Prohibited Distributions, to an agent designated by the Board of Directors (the "Agent"). The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm's-length transactions (on the public securities market on which such Excess Securities are traded, if possible, or otherwise privately); provided, however, that any such sale must not constitute a Prohibited Transfer and provided, further, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities. If the Purported Transferee has resold the Excess Securities before receiving the Corporation's demand to surrender Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sale proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 6 of this ARTICLE X if the Agent rather than the Purported Transferee had resold the Excess Securities.

SECTION 6. APPLICATION OF PROCEEDS AND PROHIBITED DISTRIBUTIONS. The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Transferee has previously resold the Excess Securities, any amounts received by it from a Purported Transferee, together, in either case, with any Prohibited Distributions, as follows: (i) first, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (ii) second, any remaining amounts shall be paid to the Purported Transferee, up to the amount paid by the Purported Transferee for the Excess Securities (or the fair market value at the time of the Transfer, in the event the purported Transfer of the Excess Securities was, in whole or in part, a gift, inheritance or similar Transfer) which amount (or fair market value) shall be determined at the discretion of the Board of Directors; and (iii) third, any remaining amounts shall be paid to one or more organizations selected by the Board of Directors which is described under Section 501(c)(3) of the Code (or any comparable successor provision) and contributions to which are eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2552 of the Code. The Purported Transferee of Excess Securities shall have no claim, cause of action or any other recourse whatsoever against any transferor of Excess Securities. The Purported Transferee's sole right with respect to such shares shall be limited to the amount payable to the Purported Transferee pursuant to this Section 6 of this ARTICLE X. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 6 of this ARTICLE X inure to the benefit of the Corporation or the Agent, except to the extent used to cover costs and expenses incurred by Agent in performing its duties hereunder.

SECTION 7. MODIFICATION OF REMEDIES FOR CERTAIN INDIRECT TRANSFERS. In the event of any Transfer that does not involve a transfer of Corporation Securities within the meaning of Delaware law but that would cause a 4.899-percent Stockholder to violate a restriction on Transfers provided for in this ARTICLE X, the application of Sections 5 and 6 of this ARTICLE X shall be modified as described in this Section 7 of this ARTICLE X. In such case, no such 4.899-percent Stockholder shall be required to dispose of any interest that is not a Corporation Security, but such 4.899-percent Stockholder and/or any Person whose ownership of Corporation Securities is attributed to such 4.899-percent Stockholder (such 4.899-percent Stockholder or other Person, a "Remedial Holder") shall be deemed to have disposed of and shall be required to dispose of sufficient Corporation Securities (which Corporation Securities shall be disposed of in the inverse



order in which they were acquired) to cause such 4.899-percent Stockholder, following such disposition, not to be in violation of this ARTICLE X. Such disposition shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision, and such number of Corporation Securities that are deemed to be disposed of shall be considered Excess Securities and shall be disposed of through the Agent as provided in Sections 5 and 6 of this ARTICLE X, except that the maximum aggregate amount payable to a Remedial Holder in connection with such sale shall be the fair market value of such Excess Securities at the time of the purported Transfer. A Remedial Holder shall not be entitled, with respect to such Excess Securities, to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, following the time of the purported Transfer. All expenses incurred by the Agent in disposing of such Excess Securities shall be paid out of any amounts due such 4.899-percent Stockholder or such other Person. The purpose of this Section 7 of this ARTICLE X is to extend the restrictions in Sections 2 and 5 of this ARTICLE X to situations in which there is a 4.899-percent Transaction without a direct Transfer of Corporation Securities, and this Section 7 of this ARTICLE X, along with the other provisions of this ARTICLE X, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

SECTION 8. LEGAL PROCEEDINGS; PROMPT ENFORCEMENT. If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof, in either case, with any Prohibited Distributions, to the Agent within thirty days from the date on which the Corporation makes a written demand pursuant to Section 5 of this ARTICLE X (whether or not made within the time specified in Section 5 of this ARTICLE X), then the Corporation may take such actions as it deems appropriate to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender. Nothing in this Section 8 of this ARTICLE X shall (i) be deemed inconsistent with any Transfer of the Excess Securities provided in this ARTICLE X being void ab initio, (ii) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand or (iii) cause any failure of the Corporation to act within the time periods set forth in Section 5 of this ARTICLE X to constitute a waiver or loss of any right of the Corporation under this ARTICLE X. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this ARTICLE X.

SECTION 9. LIABILITY. To the fullest extent permitted by law, any stockholder subject to the provisions of this ARTICLE X who knowingly violates the provisions of this ARTICLE X and any Persons controlling, controlled by or under common control with such stockholder shall be jointly and severally liable to the Corporation for, and shall indemnify and hold the Corporation harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Corporation's ability to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

SECTION 10. OBLIGATION TO PROVIDE INFORMATION. As a condition to the registration of the Transfer of any Stock, any Person who is a beneficial, legal or record holder of Stock, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Corporation may request from time to time in order to determine compliance with this ARTICLE X or the status of the Tax Benefits of the Corporation.



SECTION 11. LEGENDS. The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of shares of Stock that are subject to the restrictions on transfer and ownership contained in this ARTICLE X bear the following legend:

“THE CERTIFICATE OF INCORPORATION OF THE COMPANY CONTAINS RESTRICTIONS PROHIBITING THE TRANSFER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) OF STOCK OF THE COMPANY (INCLUDING THE CREATION OR GRANT OF CERTAIN OPTIONS, RIGHTS AND WARRANTS) WITHOUT THE PRIOR AUTHORIZATION OF THE BOARD OF DIRECTORS OF THE COMPANY (THE “BOARD OF DIRECTORS”) IF SUCH TRANSFER AFFECTS THE PERCENTAGE OF STOCK OF THE CORPORATION (WITHIN THE MEANING OF Section 382 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) AND THE TREASURY REGULATIONS PROMULGATED THEREUNDER) THAT IS TREATED AS OWNED BY A 4.899-PERCENT STOCKHOLDER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION). IF THE TRANSFER RESTRICTIONS ARE VIOLATED, THEN THE TRANSFER WILL BE VOID AB INITIO AND THE PURPORTED TRANSFEREE OF THE STOCK WILL BE REQUIRED TO TRANSFER EXCESS SECURITIES (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) TO THE COMPANY’S AGENT. IN THE EVENT OF A TRANSFER WHICH DOES NOT INVOLVE SECURITIES OF THE COMPANY WITHIN THE MEANING OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE (“SECURITIES”) BUT WHICH WOULD VIOLATE THE TRANSFER RESTRICTIONS, THE PURPORTED TRANSFEREE (OR THE RECORD OWNER) OF THE SECURITIES THAT VIOLATE THE TRANSFER RESTRICTIONS WILL BE REQUIRED TO TRANSFER SUFFICIENT SECURITIES PURSUANT TO THE TERMS PROVIDED FOR IN THE CERTIFICATE OF INCORPORATION TO CAUSE THE 4.899-PERCENT STOCKHOLDER TO NO LONGER BE IN VIOLATION OF THE TRANSFER RESTRICTIONS. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO THE HOLDER OF RECORD OF THIS CERTIFICATE A COPY OF THE CERTIFICATE OF INCORPORATION CONTAINING THE ABOVE-REFERENCED TRANSFER RESTRICTIONS UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.”

The Board of Directors may also require that any certificates issued by the Corporation evidencing ownership of shares of Stock that are subject to conditions imposed by the Board of Directors under Section 3 of this ARTICLE X also bear a conspicuous legend referencing the applicable restrictions.

SECTION 12. AUTHORITY OF BOARD OF DIRECTORS.

(a) The Board of Directors shall have the power to determine all matters necessary for assessing compliance with this ARTICLE X, including, without limitation, (1) the identification of 4.899-percent Stockholders, (2) whether a Transfer is a 4.899-percent Transaction or a Prohibited Transfer, (3) the Percentage Stock Ownership in the Corporation of any 4.899-percent Stockholder, (4) whether an instrument constitutes a Corporation Security, (5) the amount (or fair market value) due to a Purported Transferee pursuant to Section 6 of this ARTICLE X, and (6) any other matters which the Board of Directors determines to be relevant; and the good faith determination of the Board of Directors on such matters shall be conclusive and binding for all the purposes of this ARTICLE X. In addition, the Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind by-laws, regulations and procedures of the Corporation not inconsistent with the provisions of this ARTICLE X for purposes of determining whether any



Transfer of Corporation Securities would jeopardize or endanger the Corporation's ability to preserve and use the Tax Benefits and for the orderly application, administration and implementation of this ARTICLE X.

(b) Nothing contained in this ARTICLE X shall limit the authority of the Board of Directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation and its stockholders in preserving the Tax Benefits. Without limiting the generality of the foregoing, in the event of a change in law making one or more of the following actions necessary or desirable, the Board of Directors may, by adopting a written resolution, (1) accelerate the Expiration Date, (2) modify the ownership interest percentage in the Corporation or the Persons or groups covered by this ARTICLE X, (3) modify the definitions of any terms set forth in this ARTICLE X or (4) modify the terms of this ARTICLE X as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or otherwise; provided, however, that the Board of Directors shall not cause there to be such acceleration or modification unless it determines, by adopting a written resolution, that such action is reasonably necessary or advisable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefits. Stockholders of the Corporation shall be notified of such determination through a filing with the Securities and Exchange Commission or such other method of notice as the Secretary of the Corporation shall deem appropriate.

(c) In the case of an ambiguity in the application of any of the provisions of this ARTICLE X, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this ARTICLE X requires an action by the Board of Directors but fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this ARTICLE X. All such actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith shall be conclusive and binding on the Corporation, the Agent, and all other parties for all other purposes of this ARTICLE X. The Board of Directors may delegate all or any portion of its duties and powers under this ARTICLE X to a committee of the Board of Directors as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this ARTICLE X through duly authorized officers or agents of the Corporation. Nothing in this ARTICLE X shall be construed to limit or restrict the Board of Directors in its exercise of its fiduciary duties under applicable law.

SECTION 13. RELIANCE. To the fullest extent permitted by law, the Corporation and the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer, the chief accounting officer or the corporate controller of the Corporation and the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this ARTICLE X. The members of the Board of Directors shall not be responsible for any good faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of any Corporation Securities owned by, any stockholder, the Corporation is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the Securities and Exchange Act of 1934, as amended (or similar filings), as of any date, subject to its actual knowledge of the ownership of Corporation Securities.



SECTION 14. BENEFITS OF THIS ARTICLE X. Nothing in this ARTICLE X shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this ARTICLE X. This ARTICLE X shall be for the sole and exclusive benefit of the Corporation and the Agent.

SECTION 15. SEVERABILITY. The purpose of this ARTICLE X is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this ARTICLE X or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this ARTICLE X.

SECTION 16. WAIVER. With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this ARTICLE X, (i) no waiver will be effective unless expressly contained in a writing signed by the waiving party and (ii) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise or other indulgence.



ACACIA RESEARCH CORPORATION
and
COMPUTERSHARE TRUST COMPANY, N.A.
as Rights Agent
TAX BENEFITS PRESERVATION PLAN
Dated as of March 16, 2019



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EXHIBITS

Exhibit A --	Form of Certificate of Designation, Preferences and Rights of Participating Preferred Stock
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Exhibit C --	Summary of Terms



TAX BENEFITS PRESERVATION PLAN

TAX BENEFITS PRESERVATION PLAN, dated as of March 16, 2019 (the "Agreement"), between Acacia Research Corporation, a Delaware corporation (the "Company"), and Computershare Trust Company, N.A., a federally chartered trust company (the "Rights Agent").

WITNESSETH:

WHEREAS, the Company and certain of its Subsidiaries have generated certain Tax Benefits (as hereinafter defined) for United States federal income tax purposes, such Tax Benefits may potentially provide valuable benefits to the Company, the Company desires to avoid an "ownership change" within the meaning of Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations (as hereinafter defined) promulgated thereunder, and thereby preserve its ability to utilize such Tax Benefits, and, in furtherance of such objective, the Company desires to enter into this Agreement.

WHEREAS, on March 12, 2019, the Board of Directors of the Company (the "Board") authorized and declared a dividend of one preferred stock purchase right (a "Right") for each share of Common Stock (as defined below) outstanding at the close of business (as defined below) on March 16, 2019 (the "Record Date") and authorized the issuance, upon the terms and subject to the conditions herein, of one Right (subject to adjustment) in respect of each share of Common Stock issued after the Record Date, each Right representing the right to purchase, upon the terms and subject to the conditions herein, one one-thousandth (subject to adjustment) of a share of Preferred Stock (as defined below);

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1 Certain Definitions.

For purposes of this Agreement, the following terms have the meanings indicated:

(a) "Acquiring Person" shall mean any Person who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of 4.9% or more of the shares of Common Stock then outstanding, but shall not include:

- (i) the Company;
- (ii) any Subsidiary of the Company;
- (iii) any employee benefit plan of the Company, or of any Subsidiary of the Company, or any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan;
- (iv) any Person who or which becomes the Beneficial Owner of 4.9% or more of the shares of Common Stock then outstanding solely as a result of (A) a reduction in the number of shares of Common Stock outstanding due to the repurchase of shares of Common Stock by the Company (or any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan) or (B) a stock dividend, stock split, reverse stock split or similar transaction effected by the Company, in each case unless and until such Person acquires Beneficial Ownership of additional shares of Common Stock, except solely as the result of any subsequent transaction described in clause (A) or (B) of this Section 1(a)(iv);
- (v) any Person who or which, within ten (10) Business Days of being requested by the Company to advise it regarding the same, certifies to the Company that such Person acquired shares of Common Stock in excess of 4.899% inadvertently or without knowledge of the terms of the Rights and who or which, together with all Affiliates and Associates, thereafter within ten (10) Business Days following such certification reduces such Person's, together with its Affiliates' and Associates', Beneficial Ownership to less than 4.9% of the shares of Common Stock then outstanding; provided, however, that (x) if the Person requested to so certify fails to do so within ten (10) Business Days or breaches or violates such certification, then such Person shall become an Acquiring Person immediately after such ten (10) Business Day period or such breach or violation or (y) if the Person together with its Affiliates and Associates fails to reduce Beneficial Ownership to less than 4.9% within ten (10) Business Days following such certification, then such Person shall become an Acquiring Person immediately after such ten (10) Business Day period;



(vi) any Exempt Person, but only for so long as such Exempt Person, together with such Person's Affiliates and Associates, does not become the Beneficial Owner of any additional shares of Common Stock while such Person is an Exempt Person, except solely as the result of any transaction described in clause (A) or (B) of Section 1(a)(iv);

(vii) any Person that the Board determines, in its sole discretion, in light of the intent and purposes of this Agreement or other circumstances facing the Company, shall not be deemed an Acquiring Person, for so long as such Person complies with any limitations or conditions required by the Board in making such determination; provided, further that such Person shall be an "Acquiring Person" if the Board makes a contrary determination in good faith; and

(viii) any Person if, on the date that would have been (absent this clause viii) a Stock Acquisition Date with respect to such Person, such Person does not Beneficially Own any Common Stock.

(b) "Act" shall mean the Securities Act of 1933, as amended.

(c) "Adjustment Shares" shall have the meaning set forth in Section 11(a)(ii) hereof.

(d) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act and, to the extent not included within the foregoing, shall also include with respect to any Person, any other Person whose shares of Common Stock would be deemed to be constructively owned by such first Person, owned by a single "entity" with respect to such first Person as defined in Section 1.382-3(a)(1) of the Treasury Regulations, or otherwise aggregated with shares owned by such first Person, pursuant to the provisions of Section 382 of the Code and the Treasury Regulations promulgated thereunder.

(e) "Agreement" shall have the meaning set forth in the preamble to this Agreement.

(f) A Person shall be deemed the "Beneficial Owner" of, and shall be deemed to "beneficially own":

(i) any securities that such Person or any of such Person's Affiliates or Associates owns directly or has the right to acquire (whether such right is exercisable immediately, or only after the passage of time, compliance with regulatory requirements, the fulfillment of a condition, or otherwise) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, (A) any shares of Common Stock by virtue of owning securities or other interests (including rights, options or warrants) that are convertible or exchangeable into, or exercisable for, such shares of Common Stock, except to the extent that upon the issuance, acquisition or transfer of such securities or other interests, such securities or other interests would be treated as exercised under Section 1.382-4(d) or other applicable sections of the Treasury Regulations, (B) securities tendered pursuant to a tender offer or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange or (C) securities issuable upon exercise of Rights;

(ii) any securities that such Person or any of such Person's Affiliates or Associates (A) directly or indirectly has the right to vote or dispose of, alone or in concert with others, or (B) beneficially owns, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Rule 13d-3 of the General Rules and Regulations under the Exchange Act, including, with respect to both clause (A) and clause (B), pursuant to any agreement, arrangement or understanding (whether or not in writing), but only if the effect of such agreement, arrangement or understanding is to treat such Persons as an "entity" under Section 1.382-3(a)(1) of the Treasury Regulations; provided that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this subparagraph (ii) on account of an agreement, arrangement or understanding to vote such security that (X) arises solely from a revocable proxy given to such Person or any of such Person's Affiliates or Associates in response to a public proxy solicitation made pursuant to and in accordance with the applicable provisions of the General Rules and Regulations under the Exchange Act, and (Y) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); and

(iii) any securities that are beneficially owned, directly or indirectly, by any other Person, if such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) with such other Person or any of such other Person's Affiliates or Associates for the purpose of acquiring, holding, voting (other than voting pursuant to a revocable proxy as described in the proviso to Section 1(f)(ii) hereof) or disposing of any securities of the Company, but only if the effect of such agreement, arrangement or understanding is to treat such Persons as an "entity" under Section 1.382-3(a)(1) of the Treasury Regulations.



Notwithstanding the foregoing, a Person shall be deemed the “Beneficial Owner” of, and shall be deemed to “beneficially own,” securities if such Person would be deemed constructively to own such securities pursuant to Sections 1.382-2T(h) and 1.382-4(d) of the Treasury Regulations, such Person owns such securities pursuant to a “coordinated acquisition” treated as a single “entity” as defined in Section 1.382-3(a)(1) of the Treasury Regulations, or such securities are otherwise aggregated with securities owned by such Person, pursuant to the provisions of Section 382 of the Code and the Treasury Regulations promulgated thereunder.

The term “Beneficial Ownership” shall have a corresponding meaning.

- (g) “Board” shall have the meaning set forth in the recitals of this Agreement.
- (h) “Business Day” shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York or New Jersey are authorized or obligated by law or executive order to close.
- (i) “close of business” on any given date shall mean 5:00 P.M., New York, New York time, on such date; provided, however, that if such date is not a Business Day, it shall mean 5:00 P.M., New York, New York time, on the next succeeding Business Day.
- (j) “Code” shall have the meaning set forth in the recitals to this Agreement.
- (k) “Common Stock” shall mean the common stock of the Company of \$0.001 par value, except that “Common Stock” when used with reference to any other Person other than the Company shall mean the capital stock of such Person with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such Person (or, if such Person is a Subsidiary of another Person, the Person or Persons that ultimately control such first mentioned Person).
- (l) “Common Stock Equivalents” shall have the meaning set forth in Section 11(a)(iii) hereof.
- (m) “Company” shall have the meaning set forth in the preamble to this Agreement.
- (n) “Current Market Price” shall have the meaning set forth in Section 11(d) hereof.
- (o) “Current Value” shall have the meaning set forth in Section 11(a)(iii) hereof.
- (p) “Distribution Date” shall have the meaning set forth in Section 3(a) hereof.
- (q) “Equivalent Preferred Stock” shall have the meaning set forth in Section 11(b) hereof.
- (r) “Exempt Person” shall mean any Person who or which, together with all Affiliates and Associates of such Person, is, as of the Exempt Time, the Beneficial Owner of 4.9% or more of the shares of Common Stock then outstanding. Any Exempt Person who, together with such Person’s Affiliates and Associates, after the Exempt Time becomes the Beneficial Owner of less than 4.9% of the shares of Common Stock then outstanding shall cease to be an Exempt Person and shall be subject to all the provisions of this Agreement in the same manner as any Person who is not and was not an Exempt Person.
- (s) “Exempt Time” shall mean the time of the first public announcement of adoption of this Agreement.
- (t) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.
- (u) “Exchange Ratio” shall have the meaning set forth in Section 24(a) hereof.
- (v) “Expiration Date” shall have the meaning set forth in Section 7(a) hereof.
- (w) “Final Expiration Date” shall have the meaning set forth in Section 7(a) hereof.
- (x) “NASDAQ” shall have the meaning set forth in Section 11(d)(i) hereof.
- (y) “NOLs” shall mean the Company’s net operating loss carryforwards.

(z) “NYSE” shall have the meaning set forth in Section 11(d)(i) hereof.

(aa) “Person” shall mean any individual, firm, corporation, partnership, limited liability company, limited liability partnership, trust, syndicate or other entity, or group of persons making a “coordinated acquisition” of Common Stock or otherwise treated as an “entity” within the meaning of Section 1.382-3(a)(1) of the Treasury Regulations or otherwise, and also includes any successor (by merger or otherwise) of any such individual or entity.

(bb) “Preferred Stock” shall mean shares of Series B Junior Participating Preferred Stock, par value \$0.001, of the Company having the terms set forth in Exhibit A hereto, and, to the extent that there are not a sufficient number of shares of Series B Junior Participating Preferred Stock authorized to permit the full exercise of the Rights, any other series of preferred stock of the Company designated for such purpose containing terms substantially similar to the terms of the Series B Junior Participating Preferred Stock.

(cc) “Principal Party” shall have the meaning set forth in Section 13(b) hereof.

(dd) “Purchase Price” shall have the meaning set forth in Section 4(a) hereof.

(ee) “Record Date” shall have the meaning set forth in the recitals of this Agreement.

(ff) “Redemption Price” shall have the meaning set forth in Section 23(a) hereof.

(gg) “Rights” shall have the meaning set forth in the recitals of this Agreement.

(hh) “Rights Agent” shall have the meaning set forth in the preamble of this Agreement.

(ii) “Rights Certificates” shall have the meaning set forth in Section 3(a) hereof.

(jj) “Rights Dividend Declaration Date” shall have the meaning set forth in the recitals of this Agreement.

(kk) “Section 11(a)(ii) Event” shall mean any event described in Section 11(a)(ii) hereof.

(ll) “Section 11(a)(ii) Trigger Date” shall have the meaning set forth in Section 11(a)(iii) hereof.

(mm) “Section 13 Event” shall mean any event described in clauses (x), (y) or (z) of Section 13(a) hereof.

(nn) “Spread” shall have the meaning set forth in Section 11(a)(iii) hereof.

(oo) “Stock Acquisition Date” shall mean the first date of public announcement (which, for purposes of this definition, shall include a report filed or amended pursuant to Section 13(d) under the Exchange Act) by the Company or an Acquiring Person that an Acquiring Person has become such.

(pp) “Subsidiary” shall mean, with reference to any Person, any corporation or other entity of which an amount of securities or other ownership interests having ordinary voting power sufficient to elect at least a majority of the directors or other Persons having similar functions of such corporation or other entity are at the time, directly or indirectly, beneficially owned, or otherwise controlled by such Person.

(qq) “Substitution Period” shall have the meaning set forth in Section 11(a)(iii) hereof.

(rr) “Tax Benefits” shall mean the net operating loss carryovers, capital loss carryovers, general business credit carryovers, alternative minimum tax credit carryovers and foreign tax credit carryovers, as well as any loss or deduction attributable to a “net unrealized built-in loss” within the meaning of Section 382 of the Code and the Treasury Regulations promulgated thereunder, of the Company or any of its Subsidiaries.

(ss) “Trading Day” shall have the meaning set forth in Section 11(d)(i) hereof.

(tt) “Treasury Regulations” shall mean the final and temporary (but not proposed) tax regulations promulgated under the Code, as such regulations may be amended from time to time.

(uu) “Triggering Event” shall mean any Section 11(a)(ii) Event or any Section 13 Event.



Section 2 Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as agent for the Company in accordance with the express terms and conditions hereof (and no implied terms or conditions), and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-rights agents as it may deem necessary or desirable upon ten (10) days' prior written notice to the Rights Agent setting forth the respective rights and duties of the Rights Agent and any co-rights agent. The Rights Agent shall have no duty to supervise, and in no event shall be liable for, the acts or omissions of any such co-rights agent.

Section 3 Issuance of Rights Certificates.

(a) Until the earlier of (i) the close of business on the tenth (10th) Business Day after the Stock Acquisition Date (or, if the tenth (10th) Business Day after the Stock Acquisition Date occurs before the Record Date, the close of business on the Record Date), or (ii) the close of business on the tenth (10th) Business Day (or such later date as the Board shall determine) after the date that a tender or exchange offer by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan) is first published or sent or given within the meaning of Rule 14d-2(a) of the General Rules and Regulations under the Exchange Act, if upon consummation thereof, such Person would become an Acquiring Person (the earlier of (i) and (ii) being herein referred to as the "Distribution Date"), (x) the Rights will be evidenced (subject to the provisions of paragraphs (b) and (c) of this Section 3) by the certificates evidencing the Common Stock registered in the names of the holders of the Common Stock (which certificates evidencing the Common Stock shall be deemed also to be certificates evidencing the Rights) and not by separate certificates (or, for uncertificated shares registered in book entry form, by notations in the respective book entry accounts for the Common Stock), and (y) the Rights will be transferable only in connection with the transfer of the underlying shares of Common Stock (including a transfer to the Company). The Company promptly shall notify the Rights Agent in writing upon the occurrence of the Distribution Date and, if such notification is given orally, the Company shall confirm the same in writing on or prior to the next following Business Day. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the Distribution Date has not occurred. As soon as practicable after the Distribution Date and receipt by the Rights Agent of notice of such occurrence, the Rights Agent, if requested by the Company in writing and provided with all necessary information and documentation, will, subject to the following sentence, send by first-class, insured, postage prepaid mail (or such other means as may be selected by the Company and not reasonably objected to by the Rights Agent), to each record holder of the Common Stock as of the close of business on the Distribution Date, at the address of such holder then shown on the records of the Company or the transfer agent or the registrar for the Common Stock, one or more rights certificates, in substantially the form of Exhibit B hereto (the "Rights Certificates"), duly executed and countersigned in the manner provided for in Section 5(a) hereof, evidencing one Right for each share of Common Stock so held, subject to adjustment as provided herein. To the extent that a Section 11(a)(ii) Event has also occurred, the Company may implement such procedures, as it deems appropriate in its sole discretion, (with prompt written notice of the same to the Rights Agent), to minimize the possibility that Rights are received by Persons whose Rights would be null and void under Section 7(e) hereof. In the event that an adjustment in the number of Rights per share of Common Stock has been made pursuant to Section 11(p) hereof, at the time of distribution of the Rights Certificates, the Company shall make the necessary and appropriate rounding adjustments (in accordance with Section 4(a) hereof) so that Rights Certificates representing only whole numbers of Rights are distributed and cash is paid in lieu of any fractional Rights. As of and after the Distribution Date, the Rights will be evidenced solely by such Rights Certificates and may be transferred by the transfer of the Rights Certificates as permitted hereby, separately and apart from any transfer of one or more shares of Common Stock, and the holders of such Rights Certificates as listed in the records of the Company or any transfer agent or registrar for the Rights shall be the record holders thereof.

(b) The Company will make available, as promptly as practicable following the date hereof, a copy of the Summary of Rights to any holder of Rights who may so request from time to time prior to the Expiration Date. With respect to certificates evidencing the Common Stock outstanding as of the Record Date, or issued subsequent to the Record Date, unless and until the Distribution Date shall occur, the Rights will be evidenced by the certificates for the Common Stock (or, in the case of shares reflected on the direct registration system, the notations in the book-entry account system of the transfer agent for the Common Stock) and the registered holders of the Common Stock shall also be the registered holders of the associated Rights. Until the earlier of the Distribution Date or the Expiration Date, the transfer of any shares of Common Stock in respect of which Rights have been issued shall also constitute the transfer of the Rights associated with such shares of Common Stock. Notwithstanding anything to the contrary set forth in this Agreement, upon the effectiveness of a redemption pursuant to Section 23 hereof or an exchange pursuant to Section 24 hereof, the Company shall not thereafter issue any additional Rights and, for the avoidance of doubt, no Rights shall be attached to or shall be issued with any shares of Common Stock (including any shares of Common Stock issued pursuant to an exchange) at any time thereafter.

(c) Rights shall be issued in respect of all shares of Common Stock that are issued (whether originally issued or delivered from the Company's treasury) after the Record Date but prior to the earlier of the Distribution Date or the Expiration Date or, in certain circumstances provided in Section 22 hereof, after the Distribution Date. Certificates



representing such shares of Common Stock shall also be deemed to be certificates for Rights, and shall bear a legend in substantially the following form if such certificates are issued after the Exempt Time but prior to the earlier of the Distribution Date or the Expiration Date:

This certificate also evidences and entitles the holder hereof to certain Rights as set forth in the Tax Benefits Preservation Plan between Acacia Research Corporation (the "Company") and Computershare Trust Company, N.A. (or any successor Rights Agent) (the "Rights Agent") dated as of March 16, 2019 as it may be supplemented, amended or restated from time to time (the "Tax Benefits Preservation Plan"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal offices of the Company. Under certain circumstances, as set forth in the Tax Benefits Preservation Plan, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Tax Benefits Preservation Plan, as in effect on the date of mailing, without charge, promptly after receipt of a written request therefor. Under certain circumstances set forth in the Tax Benefits Preservation Plan, Rights issued to, or held by, any Person who is, was or becomes an Acquiring Person or any Affiliate or Associate thereof (as such terms are defined in the Tax Benefits Preservation Plan), whether currently held by or on behalf of such Person or by any subsequent holder, may become null and void.

With respect to such certificates containing the foregoing legend, until the earlier of (i) the Distribution Date or (ii) the Expiration Date, the Rights associated with the Common Stock represented by such certificates shall be evidenced by such certificates alone and registered holders of Common Stock shall also be the registered holders of the associated Rights, and the transfer of any of such certificates shall also constitute the transfer of the Rights associated with the Common Stock represented by such certificates. Similarly, during such time periods, transfers of shares participating in the direct registration system shall also be deemed to be transfers of the associated Rights. In the case of any shares participating in the direct registration system, the Company shall cause the transfer agent for the Common Stock to include on each direct registration account statement with respect thereto issued prior to the Distribution Date a notation to the effect that the Company will mail to the stockholder a copy of this Agreement, as in effect on the date of mailing, without charge, promptly after receipt of a written request therefor and that the recipient of the statement, as a holder of shares of Common Stock, may have certain rights thereunder. In the event that shares of the Common Stock are not represented by certificates, references in this Agreement to certificates shall be deemed to refer to the notations in the book-entry accounts reflecting ownership of such shares.

Section 4 Form of Rights Certificates.

(a) The Rights Certificates (and the forms of election to purchase and of assignment to be printed on the reverse thereof) shall each be substantially in the form set forth in Exhibit B hereto and may have such changes or marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement and which do not affect the rights, duties, liabilities or responsibilities of the Rights Agent, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any applicable rule or regulation of any stock exchange on which the Rights may from time to time be listed, or to conform to usage. Subject to the provisions of Section 11 and Section 22 hereof, the Rights Certificates, whenever distributed, shall be dated as of the Record Date and on their face shall entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as shall be set forth therein at the price set forth therein (such exercise price per one one-thousandths of a share, the "Purchase Price"), but the amount and type of securities purchasable upon the exercise of each Right and the Purchase Price thereof shall be subject to adjustment as provided herein.

(b) Any Rights Certificate issued pursuant to Section 3(a), Section 11(i) or Section 22 hereof that represents Rights beneficially owned by: (i) an Acquiring Person or any Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee after the Acquiring Person becomes such, or (iii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person (or an Associate or Affiliate of the Acquiring Person) to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person (or an Associate or Affiliate of the Acquiring Person) has any continuing agreement, arrangement or understanding (whether or not in writing) regarding the transferred Rights or (B) a transfer that the Board has determined is part of a plan, arrangement or understanding (whether or not in writing) that has as a primary purpose or effect the avoidance of Section 7(e) hereof, and any Rights Certificate issued pursuant to Section 6 or Section 11 hereof upon transfer, exchange, replacement or adjustment of any other Rights Certificate referred to in this sentence, shall contain (if the Company and the Rights Agent have knowledge that such Person is an Acquiring Person or an Associate or Affiliate thereof or transferee of such Persons or a nominee of any of the foregoing and to the extent feasible and only if the Company has provided specific written instructions to the Rights Agent) a legend in substantially the following form:



The Rights represented by this Rights Certificate are or were beneficially owned by a Person who was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Tax Benefits Preservation Plan between Acacia Research Corporation and Computershare Trust Company, N.A. (or any successor Rights Agent) dated as of March 16, 2019, as it may be supplemented, amended or restated from time to time (the "Tax Benefits Preservation Plan")). Accordingly, this Rights Certificate and the Rights represented hereby may become null and void in the circumstances specified in Section 7(e) of the Tax Benefits Preservation Plan.

Section 5 Countersignature and Registration.

(a) The Rights Certificates shall be executed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President or any Vice President, either manually or by facsimile signature, and shall have affixed thereto the Company's seal or a facsimile thereof which shall be attested by the General Counsel of the Company, either manually or by facsimile signature. The Rights Certificates shall be countersigned by an authorized signatory of the Rights Agent, either manually or by facsimile signature and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Rights Certificates shall cease to be such officer of the Company before countersignature by an authorized signatory of the Rights Agent and issuance and delivery by the Company, such Rights Certificates, nevertheless, may be countersigned by an authorized signatory of the Rights Agent and issued and delivered by the Company with the same force and effect as though the person who signed such Rights Certificates had not ceased to be such officer of the Company; and any Rights Certificates may be signed on behalf of the Company by any person who, at the actual date of the execution of such Rights Certificate, shall be a proper officer of the Company to sign such Rights Certificate, although at the date of the execution of this Agreement any such person was not such an officer. In case any authorized signatory of the Rights Agent who has countersigned any of the Rights Certificates ceases to be an authorized signatory of the Rights Agent before issuance and delivery by the Company, such Rights Certificates, nevertheless, may be issued and delivered by the Company with the same force and effect as though the person who countersigned such Rights Certificates had not ceased to be an authorized signatory of the Rights Agent; and any Rights Certificates may be countersigned on behalf of the Rights Agent by any person who, at the actual date of the countersignature of such Rights Certificate, is properly authorized to countersign such Rights Certificate, although at the date of the execution of this Agreement any such person was not so authorized.

(b) Following the Distribution Date and receipt by the Rights Agent of notice of such occurrence and of all other necessary or relevant information and documentation, as provided in Section 3(a) hereof, the Rights Agent will keep, or cause to be kept, at its office or offices designated as the appropriate place for surrender of Rights Certificates upon exercise or transfer, books for registration and transfer of the Rights Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Rights Certificates, the number of Rights evidenced on its face by each of the Rights Certificates and the date of each of the Rights Certificates.

Section 6 Transfer, Split Up, Combination and Exchange of Rights Certificates; Mutilated, Destroyed, Lost or Stolen Rights Certificates.

(a) Subject to the provisions of Section 4(b), Section 7(e) and Section 14 hereof, at any time after the close of business on the Distribution Date, and at or prior to the close of business on the Expiration Date, any Rights Certificate or Certificates (other than Rights Certificates representing Rights that have become null and void pursuant to Section 7(e) hereof or that may have been redeemed or exchanged pursuant to Section 24 hereof) may be transferred, split up, combined or exchanged for another Rights Certificate or Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock (or, following a Triggering Event, Common Stock, other securities, cash or other assets, as the case may be) as the Rights Certificate or Certificates surrendered then entitles such holder (or former holder in the case of a transfer) to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Rights Certificate or Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Rights Certificate or Certificates to be transferred, split up, combined or exchanged, with the form of assignment and certificate contained therein properly completed and duly executed and with all signatures guaranteed, at the office or offices of the Rights Agent designated for such purpose. Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Rights Certificate until the registered holder thereof shall have (i) properly completed and duly executed the certificate contained in the form of assignment on the reverse side of such Rights Certificate, (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company or the Rights Agent shall reasonably request, and (iii) paid a sum sufficient to cover any tax or charge that may be imposed in connection with any transfer, split up, combination or exchange of Rights Certificates as required by Section 9(e) hereof. Thereupon the Rights Agent shall, subject to Section 4(b), Section 7(e), Section 14 and Section 24 hereof, countersign and deliver to the Person entitled thereto a Rights Certificate or Certificates, as the case may be, as so requested, registered in such name or names as may be designated by the surrendering registered holder. The Rights Agent shall promptly forward any such sum collected by it



to the Company or to such Persons as the Company may specify by written notice. The Rights Agent shall have no duty or obligation to take any action under any section of this Agreement related to the exchange, issuance or delivery of Rights Certificates or which requires payment by a Rights holder of applicable taxes or charges unless and until it is satisfied that all such taxes and/or charges have been paid.

(b) Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Rights Certificate, and, in case of loss, theft or destruction, of indemnity or security satisfactory to them, along with a signature guarantee and such other and further documentation as the Company or the Rights Agent may reasonably request, and reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Rights Certificate, if mutilated, the Company will execute and deliver a new Rights Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered holder thereof in lieu of the Rights Certificate so lost, stolen, destroyed or mutilated.

Section 7 Exercise of Rights; Purchase Price; Expiration Date of Rights.

(a) Subject to (e) hereof, at any time after the Distribution Date the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein including the restrictions on exercisability set forth in Section 9(c) and Section 11(a)(iii)) in whole or in part upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof properly completed and duly executed, to the Rights Agent at the office or offices of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of one one-thousandths of a share of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercisable, and an amount equal to any tax or charge required to be paid under Section 9(e) hereof, at or prior to the earliest of (i) 5:00 P.M., New York, New York time, on March 15, 2021 (such date, the "Final Expiration Date"), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof, (iii) the time at which the Rights are exchanged as provided in Section 24 hereof, (iv) the close of business on the effective date of the repeal of Section 382 of the Code if the Board determines that this Agreement is no longer necessary or desirable for the preservation of Tax Benefits or (v) the close of business on the first day of a taxable year of the Company to which the Board of Directors of the Company determines that no Tax Benefits may be carried forward (the earliest of (i) - (v) being herein referred to as the "Expiration Date"). The obligations of the Rights Agent under this Agreement shall terminate upon the earlier of the Expiration Date and such time as all outstanding Rights have been exercised, redeemed or exchanged hereunder (other than Rights which have become null and void pursuant to the provisions of Section 7(e) hereof); provided, that following such termination the Rights Agent shall be required to complete all of its outstanding work and all work, if any, required to be performed by it under this Agreement in connection with such expiration, exercise, redemption or exchange.

(b) The Purchase Price for each one one-thousandth of a share of Preferred Stock pursuant to the exercise of a Right initially shall be \$12.00, shall be subject to adjustment from time to time as provided in Section 11 and Section 13(a) hereof and shall be payable in accordance with paragraph (c) below.

(c) Subject to (e) hereof, upon receipt of a Rights Certificate representing exercisable Rights, with the form of election to purchase and the certificate properly completed and duly executed, accompanied by payment, with respect to each Right so exercised, of the Purchase Price per one one-thousandth of a share of Preferred Stock (or other shares, securities, cash or other assets, as the case may be) to be purchased as set forth below and an amount equal to any tax or charge required to be paid under Section 9(e) hereof, the Rights Agent shall, subject to Section 7(f) and Section 20(k) hereof, thereupon promptly (i) (A) requisition from any transfer agent of the shares of Preferred Stock (or make available, if the Rights Agent is the transfer agent for such shares) certificates for the total number of one one-thousandths of a share of Preferred Stock to be purchased and the Company hereby irrevocably authorizes and directs each such transfer agent to comply with all such requests, or (B) if the Company shall have elected to deposit the total number of shares of Preferred Stock issuable upon exercise of the Rights hereunder with a depositary agent, requisition from the depositary agent depositary receipts representing such number of one one-thousandths of a share of Preferred Stock as are to be purchased (in which case certificates for the shares of Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depositary agent) and the Company hereby irrevocably authorizes and directs each such depositary agent to comply with such request, (ii) when necessary to comply with this Agreement, requisition from the Company the amount of cash, if any, to be paid in lieu of the issuance of fractional shares in accordance with Section 14 hereof, (iii) after receipt of such certificates or depositary receipts, cause the same to be delivered to or, upon the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder, and (iv) when necessary to comply with this Agreement, after receipt thereof, deliver such cash, if any, to or upon the order of the registered holder of such Rights Certificate. The payment of the Purchase Price (as such amount may be reduced pursuant to Section 11(a)(iii) hereof) and an amount equal to any tax or charge required to be paid under Section 9(e) hereof, shall be made in cash or by certified bank check or bank draft payable to the order of the Company. In the event that the Company is obligated to issue other securities (including Common Stock) of the Company, pay cash and/or distribute other property pursuant to Section 11(a) hereof, the Company will make all arrangements necessary so



that such other securities, cash and/or other property are available for distribution by the Rights Agent, if and when necessary to comply with this Agreement. The Company reserves the right to require prior to the occurrence of a Triggering Event that, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Preferred Stock would be issued.

(d) In case the registered holder of any Rights Certificate shall properly exercise less than all the Rights evidenced thereby, a new Rights Certificate evidencing the Rights remaining unexercised shall be issued by the Rights Agent and, if requested and provided with all necessary information and documents by the registered holder of Rights Certificates, delivered to, or upon the order of, the registered holder of such Rights Certificate or to its duly authorized assigns, registered in such name or names as may be designated by such holder, subject to the provisions of Section 14 hereof.

(e) Notwithstanding anything in this Agreement to the contrary, from and after the first occurrence of a Section 11(a)(ii) Event, any Rights beneficially owned by (i) an Acquiring Person or an Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee after the Acquiring Person becomes such, or (iii) a transferee of an Acquiring Person (or of any Associate or Affiliate of an Acquiring Person) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person (or an Associate or Affiliate of the Acquiring Person) to holders of equity interests in such Acquiring Person (or such Associate or Affiliate of an Acquiring Person) or to any Person with whom the Acquiring Person (or an Associate or Affiliate of the Acquiring Person) has any continuing agreement, arrangement or understanding (whether or not in writing) regarding the transferred Rights or (B) a transfer that the Board has determined is part of a plan, arrangement or understanding that has as a primary purpose or effect the avoidance of this (e), shall become null and void without any further action and no holder of such Rights shall have any rights whatsoever with respect to such Rights, or any Rights Certificate which formerly evidenced such Rights, whether under any provision of this Agreement or otherwise. The Company shall notify the Rights Agent when this (e) and/or Section 4(b) hereof applies and shall use all reasonable efforts to ensure that the provisions of this (e) and Section 4(b) hereof are complied with, but neither the Company nor the Rights Agent shall have any liability or obligation to any holder of Rights Certificates or any other Person as a result of the Company's failure to make any determinations with respect to an Acquiring Person or any of such Acquiring Person's Affiliates, Associates or their respective transferees hereunder. Until such notice is received by the Rights Agent, the Rights Agent shall have no duties, responsibilities or obligations with respect to this (e) and Section 4(b) hereof and shall be deemed not to have any knowledge of the identity of any such Acquiring Person, Associate or Affiliate, or the nominee of any of the foregoing.

(f) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights or other securities upon the occurrence of any purported exercise as set forth in this Section 7 unless such registered holder shall have (i) properly completed and duly executed the certificate contained in the form of election to purchase set forth on the reverse side of the Rights Certificate surrendered for such exercise, and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company or the Rights Agent shall reasonably request.

Section 8 Cancellation and Destruction of Rights Certificates. All Rights Certificates surrendered for the purpose of exercise, transfer, split up, combination, redemption or exchange shall, if surrendered to the Company or any of its agents, be delivered to the Rights Agent for cancellation or in cancelled form, or, if surrendered to the Rights Agent, shall be cancelled by it, and no Rights Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Rights Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all cancelled Rights Certificates to the Company, or shall, at the written request of the Company, destroy such cancelled Rights Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

Section 9 Reservation and Availability of Capital Stock.

(a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Preferred Stock (and, following the occurrence of a Triggering Event, out of its authorized and unissued shares of Common Stock and/or other securities or out of its authorized and issued shares held in its treasury), the number of shares of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) that, as provided in this Agreement including Section 11(a)(iii) hereof, will be sufficient to permit the exercise in full of all outstanding Rights.

(b) So long as the shares of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) issuable and deliverable upon the exercise of the Rights may be listed on any national securities exchange, the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable



(but only to the extent that it is reasonably likely that the Rights will be exercised), all shares reserved for such issuance to be listed on such exchange upon official notice of issuance upon such exercise.

(c) The Company shall use its best efforts to (i) file, as soon as practicable following the earliest date after the first occurrence of a Section 11(a)(ii) Event on which the consideration to be delivered by the Company upon exercise of the Rights has been determined in accordance with Section 11(a)(iii) hereof, a registration statement under the Act, with respect to the securities purchasable upon exercise of the Rights on an appropriate form, (ii) cause such registration statement to become effective as soon as practicable after such filing, and (iii) cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Act) until the earlier of (A) the date as of which the Rights are no longer exercisable for such securities, and (B) the Expiration Date. The Company will also take such action as may be appropriate under, or to ensure compliance with, the securities or "blue sky" laws of the various states in connection with the exercisability of the Rights. The Company may temporarily suspend, for a period of time not to exceed ninety (90) days after the date set forth in clause (i) of the first sentence of this Section 9(c), the exercisability of the Rights in order to prepare and file such registration statement and permit it to become effective. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension has been rescinded. In addition, if the Company shall determine that a registration statement is required following the Distribution Date, the Company may temporarily suspend the exercisability of the Rights until such time as a registration statement has been declared effective and give prompt written notice of the same to the Rights Agent. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction if the requisite qualification in such jurisdiction shall not have been obtained, the exercise thereof shall not be permitted under applicable law, or a registration statement in respect thereof shall not have been declared effective. The Company shall promptly notify the Rights Agent in writing after it makes a public announcement pursuant to this Section 9(c) and furnish the Rights Agent with a copy of such announcement(s).

(d) The Company covenants and agrees that it will take all such action as may be necessary to ensure that all one one-thousandths of a share of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable.

(e) The Company further covenants and agrees that it will pay when due and payable any and all taxes and charges that may be payable in respect of the issuance or delivery of the Rights Certificates and of any certificates for a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) upon the exercise of Rights. Neither the Rights Agent nor the Company shall, however, be required to pay any tax or charge that may be payable in respect of any transfer or delivery of Rights Certificates to a Person other than, or the issuance or delivery of a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) in respect of a name other than that of the registered holder of the Rights Certificates evidencing Rights surrendered for exercise, nor shall the Rights Agent or the Company be required to register for transfer, issue or deliver any certificates for a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) in a name other than that of the registered holder upon the exercise of any Rights until such tax or charge shall have been paid (any such tax or charge being payable by the holder of such Rights Certificates at the time of surrender) or until it has been established to the Company's and the Rights Agent's satisfaction that no such tax or charge is due.

Section 10 Preferred Stock Record Date. Each Person in whose name any certificate evidencing a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of such fractional shares of Preferred Stock (or Common Stock and/or other securities, as the case may be) represented thereby on, and such certificate shall be dated, the date upon which the Rights Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and all applicable taxes and charges) was duly made; provided, however, that if the date of such surrender and payment is a date upon which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares (fractional or otherwise) on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Rights Certificate shall not be entitled to any rights of a stockholder of the Company with respect to shares for which the Rights shall be exercisable, including the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as expressly provided herein.

Section 11 Adjustment of Purchase Price, Number and Kind of Shares or Number of Rights. The Purchase Price, the number and kind of shares covered by each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.



(a) (i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on the Preferred Stock payable in shares of Preferred Stock, (B) subdivide or split the outstanding shares of Preferred Stock, (C) combine or consolidate the outstanding shares of Preferred Stock into a smaller number of shares, through a reverse stock split or otherwise, or (D) issue any shares of its capital stock in a reclassification of the Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a) and Section 7(e) hereof, the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, split, combination, consolidation or reclassification, and the number and kind of shares of Preferred Stock or capital stock, as the case may be, issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive, upon payment of the Purchase Price then in effect, the aggregate number and kind of shares of Preferred Stock or capital stock, as the case may be, that, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, split, combination, consolidation or reclassification. If an event occurs that would require an adjustment under both this Section 11(a)(i) and Section 11(a)(ii) hereof, the adjustment provided for in this Section 11(a)(i) shall be in addition to, and shall be made prior to, any adjustment required pursuant to Section 11(a)(ii) hereof.

(ii) Subject to Section 24 hereof, in the event that any Person shall, at any time after the Rights Dividend Declaration Date, become an Acquiring Person, unless the event causing such Person to become an Acquiring Person is a transaction set forth in Section 13(a) hereof, then, promptly following the occurrence of such event, proper provision shall be made so that each holder of a Right (except as provided below and in Section 7(e) hereof) shall thereafter have the right to receive, upon exercise thereof at the then current Purchase Price in accordance with the terms of this Agreement, in lieu of a number of one one-thousandths of a share of Preferred Stock, such number of shares of Common Stock as shall equal the result obtained by (x) multiplying the then-current Purchase Price by the then number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the first occurrence of a Section 11(a)(ii) Event, and (y) dividing that product (which, following such first occurrence, shall thereafter be referred to as the "Purchase Price" for each Right and for all purposes of this Agreement) by fifty percent (50%) of the Current Market Price (determined pursuant to Section 11(d) hereof) per share of Common Stock on the date of such first occurrence (such number of shares, the "Adjustment Shares"). The Company shall provide the Rights Agent with written notice of the identity of any Acquiring Person, Associate or Affiliate, or the nominee of any of the foregoing, and the Rights Agent may rely on such notice in carrying out its duties under this Agreement, and shall be deemed not to have any knowledge of the identity of any such Acquiring Person, Associate or Affiliate, or the nominee of any of the foregoing unless and until it shall have received such notice.

(iii) In the event that the number of shares of Common Stock authorized by the Company's Restated Certificate of Incorporation, as may be amended from time to time, but not outstanding or reserved for issuance for purposes other than upon exercise of the Rights, is not sufficient to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii) of this Section 11(a), the Company shall (A) determine the value of the Adjustment Shares issuable upon the exercise of a Right (the "Current Value"), and (B) with respect to each Right (subject to Section 7(e) hereof), make adequate provision to substitute for the Adjustment Shares, upon the exercise of a Right and payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) Common Stock or other equity securities of the Company (including shares, or units of shares, of preferred stock, such as the Preferred Stock, that the Board has deemed to have essentially the same value or economic rights as shares of Common Stock (such equity securities being referred to herein as "Common Stock Equivalents")), (4) debt securities of the Company, (5) other assets, or (6) any combination of the foregoing, having an aggregate value equal to the Current Value (less the amount of any reduction in the Purchase Price), where such aggregate value has been determined by the Board based upon the advice of a nationally recognized investment banking firm selected by the Board; provided, however, that if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the later of (x) the first occurrence of a Section 11(a)(ii) Event and (y) the date on which the Company's right of redemption pursuant to expires (the later of (x) and (y) being referred to herein as the "Section 11(a)(ii) Trigger Date"), then the Company shall be obligated to deliver, upon the surrender for exercise of a Right and without requiring payment of the Purchase Price, shares of Common Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. For purposes of the preceding sentence, the term "Spread" shall mean the excess of (i) the Current Value over (ii) the Purchase Price. If the Board determines in good faith that it is likely that sufficient additional shares of Common Stock could be authorized for issuance upon exercise in full of the Rights, the thirty (30) day period set forth above may be extended to the extent necessary, but not more than ninety (90) days after the Section 11(a)(ii) Trigger Date, in order that the Company may seek stockholder approval for the authorization of such additional shares (such thirty (30) day period, as it may be extended, is herein called the "Substitution Period"). To the extent that the Company determines that action should be taken pursuant to the first and/or third sentences of this Section 11(a)(iii), the Company (1) shall provide, subject to Section 7(e) hereof, that such action shall apply uniformly to all outstanding Rights, and (2) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek such stockholder approval for such authorization of additional shares and/or to decide the appropriate form of



distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement (with prompt written notice thereof to the Rights Agent) stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement (with prompt written notice thereof to the Rights Agent) at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the value of each Adjustment Share shall be the Current Market Price per share of Common Stock on the Section 11(a)(ii) Trigger Date and the per share or per unit value of any Common Stock Equivalent shall be deemed to equal the Current Market Price per share of Common Stock on such date.

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of shares of Preferred Stock entitling them to subscribe for or purchase (for a period expiring within forty-five (45) calendar days after, but not including such record date) shares of Preferred Stock (or shares having the same rights, privileges and preferences as the shares of Preferred Stock (“Equivalent Preferred Stock”)) or securities convertible into Preferred Stock or Equivalent Preferred Stock at a price per share of Preferred Stock or per share of Equivalent Preferred Stock (or having a conversion price per share, if a security convertible into Preferred Stock or Equivalent Preferred Stock) less than the Current Market Price (as determined pursuant to Section 11(d) hereof) per share of Preferred Stock on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of shares of Preferred Stock that the aggregate offering price of the total number of shares of Preferred Stock and/or Equivalent Preferred Stock to be so offered (and/or the aggregate initial conversion price of the convertible securities to be so offered) would purchase at such Current Market Price, and the denominator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of additional shares of Preferred Stock and/or Equivalent Preferred Stock to be offered for subscription or purchase (or into which the convertible securities to be so offered are initially convertible). In case such subscription price may be paid by delivery of consideration, part or all of which may be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent that shall be binding and conclusive for all purposes on the Rights Agent and the holders of the Rights. Shares of Preferred Stock owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed, and in the event that such rights or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price that would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for a distribution to all holders of shares of Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of cash (other than a regular quarterly cash dividend out of the earnings or retained earnings of the Company), assets (other than a dividend payable in Preferred Stock, but including any dividend payable in stock other than Preferred Stock) or evidences of indebtedness, or of subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the Current Market Price (as determined pursuant to Section 11(d) hereof) per share of Preferred Stock on such record date, less the fair market value (as determined in good faith by the Board, whose determination shall be described in a written statement filed with the Rights Agent that shall be binding on the Rights Agent and the holders of the Rights) of the portion of the cash, assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to a share of Preferred Stock, and the denominator of which shall be such Current Market Price (as determined pursuant to Section 11(d) hereof) per share of Preferred Stock. Such adjustments shall be made successively whenever such a record date is fixed, and in the event that such distribution is not so made, the Purchase Price shall be adjusted to be the Purchase Price that would have been in effect if such record date had not been fixed.

(d) (i) For the purpose of any computation hereunder, other than computations made pursuant to Section 11(a)(iii) hereof, the “Current Market Price” per share of Common Stock on any date shall be deemed to be the average of the daily closing prices per share of such Common Stock for the thirty (30) consecutive Trading Days immediately prior to but not including such date, and for purposes of computations made pursuant to Section 11(a)(iii) hereof, the Current Market Price per share of Common Stock on any date shall be deemed to be the average of the daily closing prices per share of such Common Stock for the ten (10) consecutive Trading Days immediately following but not including such date; provided, however, that in the event that the Current Market Price per share of Common Stock is determined during a period following the announcement by the issuer of such Common Stock of (A) a dividend or distribution on such Common Stock payable in shares of such Common Stock or securities convertible into shares of such Common Stock (other than the Rights), or (B) any subdivision, combination, consolidation, reverse stock split or reclassification of such Common Stock, and the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination, consolidation, reverse stock split or reclassification shall not have occurred prior to the commencement of the requisite thirty (30) Trading Day or ten (10) Trading Day period, as set forth above, then, and in each such case, the Current Market Price shall be properly adjusted to take into account ex-dividend trading. The closing price for each day shall be the last sale price, regular way, or, in case no such sale



takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange (the "NYSE") or, if the shares of Common Stock are not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares of Common Stock are listed or admitted to trading or, if on any such date the shares of Common Stock are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers Automated Quotations System ("NASDAQ") or such other system then in use, or, if on any such date the shares of Common Stock are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock selected by the Board. If on any such date no market maker is making a market in the Common Stock, the fair value of such shares on such date as determined in good faith by the Board shall be used. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the shares of Common Stock are listed or admitted to trading is open for the transaction of business or, if the shares of Common Stock are not listed or admitted to trading on any national securities exchange, a Business Day. If the Common Stock is not publicly held or not so listed or traded, the Current Market Price per share shall mean the fair value per share as determined in good faith by the Board, whose determination shall be described in a written statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights.

(ii) For the purpose of any computation hereunder, the "Current Market Price" per share of Preferred Stock shall be determined in the same manner as set forth above for the Common Stock in clause (i) of this Section 11(d) (other than the last sentence thereof). If the Current Market Price per share of Preferred Stock cannot be determined in the manner provided above or if the Preferred Stock is not publicly held or listed or traded in a manner described in clause (i) of this Section 11(d), the Current Market Price per share of Preferred Stock shall be conclusively deemed to be an amount equal to 1,000 (as such number may be appropriately adjusted for such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock occurring after the date of this Agreement) multiplied by the Current Market Price per share of Common Stock. If neither the Common Stock nor the Preferred Stock is publicly held or so listed or traded, Current Market Price per share of the Preferred Stock shall mean the fair value per share as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights.

(e) Anything herein to the contrary notwithstanding, no adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in the Purchase Price; provided, however, that any adjustments that by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest ten-thousandth of a share of Common Stock or other share or one-millionth of a share of Preferred Stock, as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three (3) years from the date of the transaction that mandates such adjustment, or (ii) the Expiration Date.

(f) If as a result of an adjustment made pursuant to Section 11(a)(ii) or Section 13(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock other than Preferred Stock, thereafter the number of such other shares so receivable upon exercise of any Right and the Purchase Price thereof shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Sections 11(a), (b), (c), (e), (g), (h), (i), (j), (k) and (m), and the provisions of Sections 7, 9, 10, 13 and 14 hereof with respect to the Preferred Stock shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-thousandths of a share of Preferred Stock purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in (i) hereof, upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11(b) and (c) hereof, each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-thousandths of a share of Preferred Stock (calculated to the nearest one-millionth) obtained by (i) multiplying (x) the number of one one-thousandths of a share covered by a Right immediately prior to this adjustment, by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price, and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.



(i) The Company may elect on or after the date of any adjustment of the Purchase Price to adjust the number of Rights, in lieu of any adjustment in the number of one one-thousandths of a share of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after the adjustment in the number of Rights shall be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one ten-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement (with prompt written notice thereof to the Rights Agent) of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Rights Certificates have been issued, shall be at least ten (10) days later than the date of the public announcement. If Rights Certificates have been issued, upon each adjustment of the number of Rights pursuant to this (i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of Rights Certificates on such record date Rights Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Rights Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Rights Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Rights Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and shall be registered in the names of the holders of record of Rights Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of the Rights, the Rights Certificates theretofore and thereafter issued may continue to express the Purchase Price per one one-thousandth of a share and the number of one one-thousandth of a share that were expressed in the initial Rights Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below the then stated value, if any, of the number of one one-thousandths of a share of Preferred Stock issuable upon exercise of the Rights, the Company shall take any corporate action that may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable such number of one one-thousandths of a share of Preferred Stock at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer (with prompt written notice thereof to the Rights Agent) until the occurrence of such event the issuance to the holder of any Right exercised after such record date the number of one one-thousandths of a share of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise over and above the number of one one-thousandths of a share of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares (fractional or otherwise) or securities upon the occurrence of the event requiring such adjustment.

(m) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that in its good faith judgment the Board shall determine to be advisable in order that any (i) consolidation or subdivision of the Preferred Stock, (ii) issuance wholly for cash of any shares of Preferred Stock at less than the Current Market Price, (iii) issuance wholly for cash of shares of Preferred Stock or securities that by their terms are convertible into or exchangeable for shares of Preferred Stock, (iv) stock dividends or (v) issuance of rights, options or warrants referred to in this Section 11, hereafter made by the Company to holders of its Preferred Stock shall not be taxable to such stockholders.

(n) The Company covenants and agrees that it shall not, at any time after the Distribution Date, (i) consolidate with any other Person (other than a Subsidiary of the Company in a transaction that complies with Section 11(o) hereof), (ii) merge with or into any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) hereof), or (iii) sell or transfer (or permit any Subsidiary to sell or transfer), in one transaction, or a series of related transactions, assets, cash flow or earning power aggregating more than fifty percent (50%) of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company and/or any of its Subsidiaries in one or more transactions each of which complies with Section 11(o) hereof), if (x) at the time of or immediately after such consolidation, merger or sale there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights or (y) prior to, simultaneously with or immediately after such consolidation, merger or sale, the



stockholders of the Person who constitutes, or would constitute, the "Principal Party" for purposes of Section 13(a) hereof shall have received a distribution of Rights previously owned by such Person or any of its Affiliates or Associates.

(o) The Company covenants and agrees that, after the Distribution Date, it will not, except as permitted by Section 23, Section 24 or Section 27 hereof, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will diminish substantially or otherwise eliminate the benefits intended to be afforded by the Rights.

(p) Anything in this Agreement to the contrary notwithstanding, in the event that the Company shall at any time after the Rights Dividend Declaration Date and prior to the Distribution Date (i) declare a dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, the number of Rights associated with each share of Common Stock then outstanding, or issued or delivered thereafter but prior to the Distribution Date, shall be proportionately adjusted so that the number of Rights thereafter associated with each share of Common Stock following any such event shall equal the result obtained by multiplying the number of Rights associated with each share of Common Stock immediately prior to such event by a fraction the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event.

Section 12 Certificate of Adjusted Purchase Price or Number of Shares. Whenever an adjustment is made or any event affecting the Rights or their exercisability (including without limitation an event which causes Rights to become null and void) occurs as provided in Section 11 and hereof, the Company shall (a) promptly prepare a certificate setting forth such adjustment or describing such event, and a brief, reasonably detailed statement of the facts, computations and methodology accounting for such adjustment, (b) promptly file with the Rights Agent, and with each transfer agent for the Preferred Stock and the Common Stock, a copy of such certificate, and (c) if a Distribution Date has occurred, mail a brief summary thereof to each holder of a Rights Certificate in accordance with Section 25 hereof. Notwithstanding the foregoing sentence, the failure of the Company to make such certification or give such notice shall not affect the validity of such adjustment or the force or effect of the requirement for such adjustment. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment or statement therein contained and shall have no duty or liability with respect to, and shall not be deemed to have knowledge of, any adjustment or any such event unless and until it shall have received such a certificate.

Section 13 Consolidation, Merger or Sale or Transfer of Assets, Cash Flow or Earning Power.

(a) In the event that, following the Stock Acquisition Date, directly or indirectly, (x) the Company shall consolidate with, or merge with and into, any other Person (other than a Subsidiary of the Company in a transaction that complies with Section 11(o) hereof), and the Company shall not be the continuing or surviving corporation of such consolidation or merger, (y) any Person (other than a Subsidiary of the Company in a transaction that complies with Section 11(o) hereof) shall consolidate with, or merge with or into, the Company, and the Company shall be the continuing or surviving corporation of such consolidation or merger and, in connection with such consolidation or merger, all or part of the outstanding shares of Common Stock shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property, or (z) the Company shall sell or otherwise transfer (or one or more of its Subsidiaries shall sell or otherwise transfer), in one transaction or a series of related transactions, assets, cash flow or earning power aggregating more than fifty percent (50%) of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any Person or Persons (other than the Company or any Subsidiary of the Company in one or more transactions each of which complies with Section 11(o) hereof), then, and in each such case, proper provision shall be made so that: (i) each holder of a Right, except as provided in Section 7(e) hereof, shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price in accordance with the terms of this Agreement, such number of validly authorized and issued, fully paid, nonassessable and freely tradeable shares of Common Stock of the Principal Party, not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall be equal to the result obtained by (1) multiplying the then current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right is exercisable immediately prior to the first occurrence of a Section 13 Event (or, if a Section 11(a)(ii) Event has occurred prior to the first occurrence of a Section 13 Event, multiplying the number of such one one-thousandths of a share for which a Right was exercisable immediately prior to the first occurrence of a Section 11(a)(ii) Event by the Purchase Price in effect immediately prior to such first occurrence of a Section 11(a)(ii) Event), and (2) dividing that product (which, following the first occurrence of a Section 13 Event, shall be referred to as the "Purchase Price" for each Right and for all purposes of this Agreement) by 50% of the Current Market Price (determined pursuant to Section 11(d)(i) hereof) per share of the Common Stock of such Principal Party on the date of consummation of such Section 13 Event; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such, all the obligations and duties of the Company pursuant to this Agreement; (iii) the term "Company" shall thereafter be deemed to refer to such Principal Party, it being specifically intended that the provisions of Section 11 hereof shall apply only to such Principal Party following the first occurrence of a Section 11(a)(ii) Event; (iv) such



Principal Party shall take such steps (including the reservation of a sufficient number of shares of its Common Stock) in connection with the consummation of any such transaction as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its shares of Common Stock thereafter deliverable upon the exercise of the Rights; and (v) the provisions of Section 11(a)(ii) hereof shall be of no effect following the first occurrence of any Section 13 Event.

(b) "Principal Party" shall mean:

(i) in the case of any transaction described in clause (x) or (y) of the first sentence of (a) hereof, the Person that is the issuer of any securities into which shares of Common Stock of the Company are converted in such merger or consolidation, and if no securities are so issued, the Person that is the other party to such merger or consolidation; and

(ii) in the case of any transaction described in clause (z) of the first sentence of (a) hereof, the Person that is the party receiving the greatest portion of the assets, cash flow or earning power transferred pursuant to such transaction or transactions;

provided, however, that in any such case, (1) if the Common Stock of such Person is not at such time and has not been continuously over the preceding twelve (12) month period registered under Section 12 of the Exchange Act, and such Person is a direct or indirect Subsidiary of another Person the Common Stock of which is and has been so registered, "Principal Party" shall refer to such other Person; and (2) in case such Person is a Subsidiary, directly or indirectly, of more than one Person, the Common Stock of two or more of which are and have been so registered, "Principal Party" shall refer to whichever of such Persons is the issuer of the Common Stock having the greatest aggregate market value.

(c) The Company shall not consummate any such consolidation, merger, sale or transfer unless the Principal Party shall have a sufficient number of authorized shares of its Common Stock that have not been issued or reserved for issuance to permit the exercise in full of the Rights in accordance with this Section 13 and unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing for the terms set forth in paragraphs (a) and (b) of this Section 13 and further providing that, as soon as practicable after the date of any consolidation, merger or sale of assets mentioned in paragraph (a) of this, the Principal Party will:

(i) prepare and file a registration statement under the Act, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, and will use its best efforts to cause such registration statement to (A) become effective as soon as practicable after such filing and (B) remain effective (with a prospectus at all times meeting the requirements of the Act) until the Expiration Date; (ii) take all such other action as may be necessary to enable the Principal Party to issue the securities purchasable upon exercise of the Rights, including the registration or qualification of such securities under all requisite securities laws of jurisdictions of the various states and the listing of such securities on such exchanges and trading markets as may be necessary or appropriate; and

(ii) deliver to holders of the Rights historical financial statements for the Principal Party and each of its Affiliates that comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act.

The provisions of this Section 13 shall similarly apply to successive mergers or consolidations or sales or other transfers. In the event that a Section 13 Event shall occur at any time after the occurrence of a Section 11(a)(ii) Event, the Rights which have not theretofore been exercised shall thereafter become exercisable in the manner described in (a).

Section 14 Fractional Rights and Fractional Shares.

(a) The Company shall not be required to issue fractions of Rights, except prior to the Distribution Date as provided in Section 11(p) hereof, or to distribute Rights Certificates that evidence fractional Rights. In lieu of such fractional Rights, the Company shall pay to the registered holders of the Rights Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For purposes of this Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price of the Rights for any Trading Day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Rights are not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading, or if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid



and low asked prices in the over-the-counter market, as reported by NASDAQ or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights, selected by the Board. If on any such date no such market maker is making a market in the Rights, the fair value of the Rights on such date as determined in good faith by the Board shall be used, which determination shall be described in a statement filed with the Rights Agent and, in relation to the Rights Agent shall be conclusive for all purposes.

(b) The Company shall not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) upon exercise of the Rights or to distribute certificates that evidence fractional shares of Preferred Stock (other than fractions that are integral multiples of one one-thousandth of a share of Preferred Stock). In lieu of the issuance of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one one-thousandth of a share of Preferred Stock. For purposes of this Section 14(b), the current market value of one one-thousandth of a share of Preferred Stock shall be one one-thousandth of the closing price of a share of Preferred Stock (as determined pursuant to Section 11(d)(ii) hereof) on the Trading Day immediately prior to the date of such exercise.

(c) Following the occurrence of a Triggering Event, the Company shall not be required to issue fractions of shares of Common Stock upon exercise of the Rights or to distribute certificates that evidence fractional shares of Common Stock. In lieu of fractional shares of Common Stock, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one (1) share of Common Stock. For purposes of this Section 14(c), the current market value of one share of Common Stock shall be the closing price per share of Common Stock (as determined pursuant to Section 11(d)(i) hereof) on the Trading Day immediately prior to the date of such exercise.

(d) Whenever a payment for fractional Rights or any fractional shares is to be made by the Rights Agent, the Company shall (i) promptly prepare and deliver to the Rights Agent a certificate setting forth in reasonable detail the facts related to such payments and the prices and/or formulas utilized in calculating such payments, and (ii) provide sufficient monies to the Rights Agent in the form of fully collected funds to make such payments. The Rights Agent shall be fully protected in relying upon such a certificate and shall have no duty with respect to, and shall not be deemed to have knowledge of any payment for fractional Rights or fractional shares under any Section of this Agreement relating to the payment of fractional Rights or fractional shares unless and until the Rights Agent shall have received such a certificate and sufficient monies.

(e) The holder of a Right by the acceptance of the Rights expressly waives such holder's right to receive any fractional Rights or any fractional shares upon exercise of a Right, except as permitted by this Section 14.

Section 15 Rights of Action. All rights of action in respect of this Agreement, other than the rights of action given to the Rights Agent under Section 18 and Section 20 hereof, are vested in the respective registered holders of the Rights Certificates (and, prior to the Distribution Date, the registered holders of the Common Stock); and any registered holder of any Rights Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Rights Certificate (or, prior to the Distribution Date, of the Common Stock), may, in such holder's own behalf and for such holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, such holder's right to exercise the Rights evidenced by such Rights Certificate in the manner provided in such Rights Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and shall be entitled to specific performance of the obligations hereunder and injunctive relief against actual or threatened violations of the obligations hereunder of any Person subject to this Agreement.

Section 16 Agreement of Rights Holders. Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of shares of Common Stock;

(b) after the Distribution Date, the Rights Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office or offices of the Rights Agent designated for such purposes, properly executed and duly endorsed or accompanied by a proper instrument of transfer and with the appropriate forms and certificates duly executed;



(c) subject to Section 6(a) and Section 7(f) hereof, the Company and the Rights Agent may deem and treat the Person in whose name a Rights Certificate (or, prior to the Distribution Date, the associated Common Stock certificate (or book entry shares in respect of Common Stock)) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Rights Certificates or the associated Common Stock certificate (or notices provided to holders of book entry shares of Common Stock) made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent, subject to the last sentence of Section 7(e) hereof, shall be required to be affected by any notice to the contrary; and

(d) notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent nor any of their directors, officers, employees, or agents shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, judgment, decree or ruling (whether interlocutory or final) issued by a court of competent jurisdiction or by a governmental, regulatory, self-regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; provided, however, the Company shall use its best efforts to have any such injunction, order, judgment, decree or ruling lifted or otherwise overturned as soon as possible.

Section 17 Rights Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Rights Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the number of one one-thousandths of a share of Preferred Stock or any other securities of the Company that may at any time be issuable on the exercise or exchange of the Rights represented thereby, nor shall anything contained herein or in any Rights Certificate be construed to confer upon the holder of any Rights Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 25 hereof), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Rights Certificate shall have been exercised or exchanged in accordance with the provisions hereof.

Section 18 Concerning the Rights Agent.

(a) The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and disbursements and other disbursements incurred in the preparation, negotiation, delivery, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent and its Affiliates, directors, officers, employees, or agents for, and to hold it harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of legal counsel), incurred without gross negligence, bad faith or willful misconduct on the part of the Rights Agent (each as determined by a final judgment of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the acceptance, administration, exercise and performance of its duties under this Agreement, including the costs and expenses of defending against any claim of liability and the costs and expenses of enforcing this right of indemnification. The provisions of this Section 18 and Section 20 hereof shall survive (a) the termination or expiration of this Agreement, (b) the termination of the obligations of the Rights Agent hereunder in accordance with Section 7(a) hereof, (c) the exercise or expiration of the Rights and (d) the resignation, replacement or removal of the Rights Agent.

(b) The Rights Agent shall be authorized and protected and shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Agreement and the exercise and performance of its duties hereunder in reliance upon any Rights Certificate or certificate for Common Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified, guaranteed or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in Section 20 hereof. The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder, but for which it has not received such notice in writing and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith, unless and until it has received such notice in writing.

Section 19 Merger or Consolidation or Change of Name of Rights Agent.

(a) Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the stockholder services or stock transfer business of the Rights



Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; but only if such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Rights Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of an authorized signatory of a predecessor Rights Agent and deliver such Rights Certificates so countersigned, and if at that time any of the Rights Certificates shall not have been countersigned, an authorized signatory of any successor Rights Agent may countersign such Rights Certificates either in the name of the predecessor or in the name of the successor Rights Agent. In all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

(b) If at any time the name of the Rights Agent shall be changed and at such time any of the Rights Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature of an authorized signatory under its prior name and deliver Rights Certificates so countersigned; and if at that time any of the Rights Certificates shall not have been countersigned, an authorized signatory of the Rights Agent may countersign such Rights Certificates either in its prior name or in its changed name. In all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

Section 20 Rights and Duties of Rights Agent. The Rights Agent undertakes to perform only the duties and obligations expressly imposed by this Agreement (and no implied duties or obligations) upon the following terms and conditions, by all of which the Company and the holders of Rights Certificates, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel (who may be legal counsel for the Company or an employee of the Rights Agent), and the advice or opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to, and the Rights Agent shall incur no liability for or in respect of, any action taken, suffered or omitted to be taken by it in the absence of gross negligence, bad faith and willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction) and in accordance with such advice or opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter (including, without limitation, the identity of any Acquiring Person and the determination of Current Market Price) be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company and delivered to the Rights Agent, and such certificate shall be full and complete authorization and protection to the Rights Agent for, and the Rights Agent shall incur no liability for or in respect of, any action taken, suffered or omitted to be taken by it in the absence of gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction) under the provisions of this Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction). Anything to the contrary in this Agreement notwithstanding, in no event shall the Rights Agent be liable for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damage. Any liability of the Rights Agent under this Agreement will be limited to the amount of annual fees paid by the Company to the Rights Agent during the twelve (12) months immediately preceding the event for which recovery from the Rights Agent is being sought.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Rights Certificates or be required to verify the same (except as to its countersignature on such Rights Certificates), but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Rights Certificate (except its countersignature thereof) or any modification or order of any court, tribunal, or governmental authority in connection with the foregoing; nor shall it be liable or responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Rights Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming null and void pursuant to Section 11 hereof) or any change or adjustment in the terms of the Rights required under the provisions of Sections 3, 11, 23 or 24 hereof (provided, that the foregoing does not nullify any express duties the Rights Agent may have in such Sections herein) or



responsible for the manner, method or amount thereof or the ascertaining of the existence of facts that would require any such change or adjustment (except with respect to the exercise of Rights evidenced by Rights Certificates after receipt of the certificate described in Section 12 hereof, upon which the Rights Agent may rely); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock or Preferred Stock to be issued pursuant to this Agreement or any Rights Certificate or as to whether any shares of Common Stock or Preferred Stock will, when so issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company, and is authorized to apply to such officers for advice or instructions in connection with its duties, and such instructions shall be full authorization and protection to the Rights Agent and the Rights Agent shall not be liable for or in respect of any action taken, suffered or omitted to be taken by it in accordance with instructions of any such officer or for any delay in acting while waiting for those instructions. The Rights Agent shall be fully authorized and protected in relying upon the most recent instructions received by any such officer. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken, suffered or omitted by the Rights Agent under this Agreement and the date on and/or after which such action shall be taken or suffered or such omission shall be effective. The Rights Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with a proposal included in any such application on or after the date specified in such application (which date shall not be less than five (5) Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking any such action (or the effective date in the case of an omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken, suffered or omitted.

(h) The Rights Agent and any stockholder, member, Affiliate, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though the Rights Agent were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any such stockholder, member, Affiliate, director, officer or employee from acting in any other capacity for the Company or for any other Person.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself (through its directors, officers and employees) or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company or any other Person resulting from any such act, omission, default, neglect or misconduct, absent gross negligence, bad faith or willful misconduct in the selection and continued employment thereof (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

(j) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder (other than internal costs incurred by the Rights Agent in providing services to the Company in the ordinary course of its business as Rights Agent) or in the exercise of its rights if it reasonably believes that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(k) If, with respect to any Rights Certificate surrendered to the Rights Agent for exercise or transfer, the certificate attached to the form of assignment or form of election to purchase, as the case may be, has either not been properly completed and duly executed or indicates an affirmative response to clause 1 and/or 2 thereof, the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

Section 21 Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon thirty (30) days' notice in writing mailed to the Company in the manner set forth in Section 26 herein, and in the event that the Rights Agent or one or more of its Affiliates is not also the transfer agent for the Company, to each transfer agent of the Common Stock and Preferred Stock by first-class mail, postage prepaid, or nationally recognized overnight delivery. If at any time the Rights Agent or one of its Affiliates is also the transfer agent for the Company,



in the event such transfer agency relationship terminates, the Rights Agent will be deemed to have resigned automatically and be discharged from its duties under this Agreement as of the effective date of such termination, and the Company shall be responsible for sending any required notice. The Company may remove the Rights Agent or any successor Rights Agent upon thirty (30) days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock and Preferred Stock, by registered or certified mail, and, if such removal occurs after the Distribution Date, to the holders of the Rights Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Rights Certificate (which holder shall, with such notice, submit such holder's Rights Certificate for inspection by the Company), then any registered holder of any Rights Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be (a) a Person organized and doing business in good standing under the laws of the United States or of the State of New York or of any other state of the United States, authorized under such laws to exercise stockholder services powers and which has, along with its Affiliates, at the time of its appointment as Rights Agent a combined capital and surplus of at least \$50,000,000 or (b) an Affiliate of a Person described in clause (a) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed, and the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the foregoing purpose, but the Rights Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock and the Preferred Stock, and, if such appointment occurs after the Distribution Date, mail a notice thereof in writing to the registered holders of the Rights Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22 Issuance of New Rights Certificates. Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Rights Certificates evidencing Rights in such form as may be approved by the Board to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Rights Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of shares of Common Stock following the Distribution Date and prior to the redemption, exchange or expiration of the Rights, the Company (a) shall, with respect to shares of Common Stock so issued or sold pursuant to the exercise of stock options or under any employee benefit plan or arrangement, granted or awarded as of the Distribution Date, or upon the exercise, conversion or exchange of securities hereinafter issued by the Company (except as may otherwise be provided in the instrument(s) governing such securities), and (b) may, in any other case, if deemed necessary or appropriate by the Board, issue Rights Certificates representing the appropriate number of Rights in connection with such issuance or sale; provided, however, that (i) no such Rights Certificate shall be issued if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom such Rights Certificate would be issued, and (ii) no such Rights Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

Section 23 Redemption and Termination.

(a) The Board may, at its option, at any time prior to the earlier of (i) the close of business on the tenth (10th) Business Day following the Stock Acquisition Date (or, if the Stock Acquisition Date shall have occurred prior to the Record Date, the close of business on the tenth (10th) Business Day following the Record Date), or (ii) the Final Expiration Date, redeem all but not less than all of the then outstanding Rights at a redemption price of \$0.001 per Right, as such amount may be appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the "Redemption Price"). Notwithstanding anything contained in this Agreement to the contrary, the Rights shall not be exercisable after the first occurrence of a Section 11(a)(ii) Event until such time as the Company's right of redemption hereunder has expired. The Company may, at its option, pay the Redemption Price in cash, shares of Common Stock (based on the Current Market Price of the Common Stock at the time of redemption) or any other form of consideration deemed appropriate by the Board.

(b) Immediately upon the action of the Board ordering the redemption of the Rights, evidence of which shall have been filed with the Rights Agent and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. Promptly after the action of the Board ordering the redemption of the Rights, the Company shall give notice of such redemption to the Rights Agent and the holders of the then outstanding Rights by mailing such notice to all such holders at



each holder's last address as it appears upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Stock. Any notice that is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made.

(c) Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 and other than in connection with the purchase or repurchase by any of them of Common Stock prior to the Distribution Date.

Section 24 Exchange.

(a) The Board may, at its option, at any time after any Person becomes an Acquiring Person, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become null and void pursuant to the provisions of Section 7(e) hereof) for Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such exchange ratio being hereinafter referred to as the "Exchange Ratio"). Notwithstanding the foregoing, the Board shall not be empowered to effect such exchange at any time after (i) any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or any such Subsidiary, or any entity holding Common Stock for or pursuant to the terms of any such plan), together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of fifty percent (50%) or more of the Common Stock then outstanding or (ii) the occurrence of an event specified in Section 13(a) hereof.

(b) Immediately upon the action of the Board ordering the exchange of any Rights pursuant to subsection (a) of this Section 24 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of Common Stock equal to the number of Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice of any such exchange (with prompt written notice thereof to the Rights Agent); provided, however, that the failure to give, or any defect in, such notice shall not affect the legality or validity of such exchange. The Company promptly shall mail a notice of any such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice that is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the Common Stock for Rights will be effected and, in the event of any partial exchange, the number of Rights that will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights that have become null and void pursuant to the provisions of Section 7(e) hereof) held by each holder of Rights.

(c) Following the action of the Board ordering the exchange of any Rights pursuant to subsection (a) of this Section 24, the Company may implement such procedures in its sole discretion as it deems appropriate for the purpose of ensuring that the Common Stock (or such other consideration) issuable upon an exchange pursuant to this Section 24 not be received by holders of Rights that have become null and void pursuant to Section 7(e) hereof. In furtherance thereof, if so directed by the Company, all or a portion of the shares of Common Stock (or other consideration) potentially issuable to holders of Rights upon an exchange pursuant to this Section 24, who have not verified to the satisfaction of the Company, in its sole discretion, that they are not Acquiring Persons, may be deposited in a trust established by the Company pending receipt of appropriate verification.

(d) In any exchange pursuant to this Section 24, the Company, at its option, may substitute Preferred Stock (or Equivalent Preferred Stock) for Common Stock exchangeable for Rights, at the initial rate of one one-thousandth of a share of Preferred Stock (or Equivalent Preferred Stock) for each share of Common Stock, as appropriately adjusted to reflect stock splits, stock dividends and other similar transactions after the date hereof.

(e) In the event that there shall not be sufficient shares of Common Stock issued but not outstanding or authorized but unissued to permit any exchange of Rights as contemplated in accordance with this Section 24, the Company shall take all such action as may be necessary to authorize additional shares of Common Stock for issuance upon exchange of the Rights.

(f) The Company shall not be required to issue fractions of shares of Common Stock or to distribute certificates that evidence fractional shares of Common Stock. In lieu of such fractional shares of Common Stock, there shall be paid to the registered holders of the Rights Certificates with regard to which such fractional shares of Common Stock would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole share of Common Stock. For the purposes of this subsection (f), the current market value of a whole share of Common Stock shall be the closing



price of a share of Common Stock (as determined pursuant to the second sentence of Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of exchange pursuant to this Section 24.

Section 25 Notice of Certain Events.

(a) In case the Company shall propose, at any time after the Distribution Date, (i) to pay any dividend payable in stock of any class to the holders of Preferred Stock or to make any other distribution to the holders of Preferred Stock (other than a regular quarterly cash dividend out of earnings or retained earnings of the Company), (ii) to offer to the holders of Preferred Stock rights or warrants to subscribe for or to purchase any additional shares of Preferred Stock or shares of stock of any class or any other securities, rights or options, (iii) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision of outstanding shares of Preferred Stock), (iv) to effect any consolidation or merger into or with any other Person (other than a Subsidiary of the Company in a transaction that complies with Section 11(o) hereof), or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one transaction or a series of related transactions, of more than fifty percent (50%) of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company and/or any of its Subsidiaries in one or more transactions each of which complies with Section 11(o) hereof), or (v) to effect the liquidation, dissolution or winding up of the Company, then, in each such case, the Company shall give to the Rights Agent and to the extent feasible to each holder of a Rights Certificate, in accordance with Section 26 hereof, a notice of such proposed action, which notice shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the shares of Preferred Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least twenty (20) days prior to but not including the record date for determining holders of the shares of Preferred Stock for purposes of such action, and in the case of any such other action, at least twenty (20) days prior to but not including the date of the taking of such proposed action or the date of participation therein by the holders of the shares of Preferred Stock, whichever shall be the earlier.

(b) In the event that any Section 11(a)(ii) Event shall occur, (i) the Company shall as soon as practicable thereafter give to the Rights Agent and to each holder of a Rights Certificate, to the extent feasible and in accordance with Section 26 hereof, a notice of the occurrence of such event, which notice shall specify the event and the consequences of the event to holders of Rights under Section 11(a)(ii) hereof, and (ii) all references in the preceding paragraph to Preferred Stock shall be deemed thereafter to refer to Common Stock and/or, if appropriate, other securities. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that no such Section 11(a)(ii) Event has occurred.

Section 26 Notices. Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Rights Certificate to or on the Company shall be sufficiently given or made if in writing and sent or delivered by recognized national overnight delivery service or first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent by the Company) as follows:

Acacia Research Corporation
120 Newport Center Drive
Newport Beach, California 92660
Attention: Secretary

Subject to the provisions of Section 21 hereof, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Rights Certificate to or on the Rights Agent shall be sufficiently given or made if in writing and sent or delivered by recognized national overnight delivery service or first-class mail, postage prepaid, addressed (until another address is filed in writing by the Rights Agent with the Company) as follows:

Computershare Trust Company, N.A.
250 Royall Street
Canton, MA 02021
Attention: Relationship Manager

With a copy to:

Computershare Trust Company, N.A.
250 Royall Street
Canton, MA 02021



Attention: Legal Department

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Rights Certificate (or, if prior to the Distribution Date, to the holder of certificates representing shares of Common Stock) shall be sufficiently given or made if in writing and sent or delivered by recognized national overnight delivery service or first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27 Supplements and Amendments. Subject to this Section 27, this Agreement may be supplemented or amended at the times and for the purposes set forth below. Prior to the Distribution Date, the Company and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement, other than to extend the Final Expiration Date, without the approval of any holders of shares of Common Stock. From and after the Distribution Date, the Company and the Rights Agent shall, if the Company so directs, supplement or amend this Agreement without the approval of any holders of Rights Certificates in order (i) to cure any ambiguity, (ii) to correct or supplement any provision contained herein that may be defective or inconsistent with any other provisions herein, (iii) to shorten or lengthen any time period hereunder (other than to lengthen the Final Expiration Date) or (iv) to change or supplement the provisions hereunder in any manner that the Company may deem necessary or desirable and that shall not adversely affect the interests of the holders of Rights Certificates (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person). Upon the delivery of a certificate from an appropriate officer of the Company that states that the proposed supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent shall execute such supplement or amendment; provided, that, the Rights Agent may, but shall not be obligated to, enter into any supplement or amendment that affects the Rights Agent's own rights, duties, obligations or immunities under this Agreement. Notwithstanding anything herein to the contrary, this Agreement may not be amended (other than pursuant to clauses (i) or (ii) of the third sentence of this Section 27) at a time when the Rights are not redeemable.

Section 28 Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29 Determinations and Actions by the Board, etc. For all purposes of this Agreement, any calculation of the number of shares of Common Stock or any other class of capital stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Exchange Act or Section 382 of the Code and the Treasury Regulations promulgated thereunder, as appropriate. The Board shall have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, the right and power to (i) interpret the provisions of this Agreement, and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including a determination to redeem or not redeem the Rights or to amend this Agreement). All such actions, calculations, interpretations and determinations (including for purposes of clause (y) below, all omissions with respect to the foregoing) which are done or made by the Board in good faith, shall (x) be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights and all other Persons, and (y) not subject the Board, or any of the directors on the Board to any liability to the holders of the Rights. The Rights Agent shall be entitled to assume the Board acted in good faith and shall be fully protected and incur no liability in the Rights Agent's reliance thereon.

Section 30 Benefits of this Agreement. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Common Stock) any legal or equitable right, remedy or claim under this Agreement. This Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Common Stock).

Section 31 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, that notwithstanding anything in this Agreement to the contrary, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or unenforceable and the Board determines in its good faith judgment that severing the invalid language from this Agreement would adversely affect the purpose or effect of this Agreement, the right of redemption set forth in Section 23 hereof shall be reinstated and shall not expire until the close of business on the tenth (10th) Business Day following the date of such determination by the Board and provided further that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately upon written notice to the Company. Without limiting the foregoing, if any



provision requiring a specific group of directors of the Company to act is held by any court of competent jurisdiction or other authority to be invalid, void or unenforceable, such determination shall then be made by the Board in accordance with applicable law and the Company's Restated Certificate of Incorporation and Bylaws, each as may be amended from time to time.

Section 32 Governing Law. This Agreement, each Right and each Rights Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts made and to be performed entirely within such State.

Section 33 Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect and enforceability as an original signature.

Section 34 Descriptive Headings; Interpretation.

(a) Descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(c) For purposes of this Agreement, whenever a specific provision of the Code or a specific Treasury Regulation is referenced, such reference shall also apply to any successor or replacement provision or Treasury Regulation, as applicable.

Section 35 Force Majeure. Notwithstanding anything to the contrary contained herein, the Rights Agent shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war or civil unrest.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

ACACIA RESEARCH CORPORATION

By:
Name: Marc W. Booth
Title: Chief Intellectual Property Officer

COMPUTERSHARE TRUST COMPANY, N.A., as Rights
Agent

By:
Name:
Title:



CERTIFICATE OF DESIGNATION, PREFERENCES AND
RIGHTS OF SERIES B JUNIOR PARTICIPATING PREFERRED STOCK
of
ACACIA RESEARCH CORPORATION

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

I, Jennifer Graff, Secretary of Acacia Research Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (herein referred to as the "Company"), in accordance with the provisions of Section 103 thereof, DO HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors by the Amended and Restated Certificate of Incorporation of the Company (as may be amended from time to time, the "Certificate of Incorporation"), the said Board of Directors on March 12, 2019, adopted the following resolution creating a series of 300,000 shares of Preferred Stock designated as Series B Junior Participating Preferred Stock:

RESOLVED, that pursuant to the authority vested in the Board of Directors of the Company in accordance with the provisions of the Certificate of Incorporation, a series of Preferred Stock of the Company be and it hereby is created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof are as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series B Junior Participating Preferred Stock" and the number of shares constituting such series shall be 300,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, however, that no decrease shall reduce the number of shares of Series B Junior Participating Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the exercise of any options, rights or warrants issuable upon conversion of any outstanding securities issued by the Company convertible into Series B Junior Participating Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series B Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series B Junior Participating Preferred Stock, in preference to the holders of common stock of the Company with \$0.001 par value (the "Common Stock"), and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series B Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, one thousand (1,000) times the aggregate per share amount of all cash dividends, and one thousand (1,000) times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series B Junior Participating Preferred Stock. In the event the Company shall at any time after March 16, 2019 (the "Rights Dividend Declaration Date"), (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series B Junior Participating Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.



(B) The Company shall declare a dividend or distribution on the Series B Junior Participating Preferred Stock as provided in Paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series B Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series B Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series B Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series B Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series B Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series B Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than thirty (30) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series B Junior Participating Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series B Junior Participating Preferred Stock shall entitle the holder thereof to one thousand (1,000) votes on all matters submitted to a vote of the stockholders of the Company. In the event the Company shall at any time after the Rights Dividend Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series B Junior Participating Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided by applicable law, the holders of shares of Series B Junior Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Company.

(C) Holders of Series B Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series B Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series B Junior Participating Preferred Stock outstanding shall have been paid in full, the Company shall not:



(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Junior Participating Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Junior Participating Preferred Stock, except dividends paid ratably on the Series B Junior Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Junior Participating Preferred Stock, provided that the Company may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series B Junior Participating Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series B Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series B Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under Paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series B Junior Participating Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. (i) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Company, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series B Junior Participating Preferred Stock shall have received an amount equal to \$1,000 per share of Series B Junior Participating Preferred Stock, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series B Liquidation Preference"). Following the payment of the full amount of the Series B Liquidation Preference, no additional distributions shall be made to the holders of shares of Series B Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series B Liquidation Preference by (ii) one thousand (1,000) (as appropriately adjusted as set forth in subparagraph (C) below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series B Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series B Junior Participating Preferred Stock and Common Stock, respectively, holders of Series B Junior Participating Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(A) In the event, however, that there are not sufficient assets available to permit payment in full of the Series B Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series B Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.



(B) In the event the Company shall at any time after the Rights Dividend Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series B Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to one thousand (1,000) times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Company shall at any time after the Rights Dividend Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series B Junior Participating Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series B Junior Participating Preferred Stock shall not be redeemable.

Section 9. Ranking. The Series B Junior Participating Preferred Stock shall rank junior to all other series of the Company's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

Section 10. Amendment. At any time when any shares of Series B Junior Participating Preferred Stock are outstanding, neither the Certificate of Incorporation nor this Certificate of Designation shall be amended in any manner that would materially alter or change the powers, preferences or special rights of the Series B Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority of the outstanding shares of Series B Junior Participating Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Series B Junior Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series B Junior Participating Preferred Stock.

IN WITNESS WHEREOF, Acacia Research Corporation has caused this Certificate of Designation to be executed in its corporate name this 15th day of March, 2019.

ACACIA RESEARCH CORPORATION

By: /s/ Jennifer Graff
Name: Jennifer Graff
Title: Secretary

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[Form of Rights Certificate]

Certificate No. R- _____ Rights

NOT EXERCISABLE AFTER MARCH 15, 2021 OR SUCH EARLIER DATE AS THE RIGHTS ARE REDEEMED, EXCHANGED OR TERMINATED. THE RIGHTS ARE SUBJECT TO REDEMPTION AT THE OPTION OF THE COMPANY, AT \$0.001 PER RIGHT, AND TO EXCHANGE ON THE TERMS SET FORTH IN THE PLAN. UNDER CERTAIN CIRCUMSTANCES, RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON (AS SUCH TERM IS DEFINED IN THE PLAN) AND ANY SUBSEQUENT HOLDER OF SUCH RIGHTS MAY BECOME NULL AND VOID. [THE RIGHTS REPRESENTED BY THIS RIGHTS CERTIFICATE ARE OR WERE BENEFICIALLY OWNED BY A PERSON WHO WAS OR BECAME AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE PLAN). ACCORDINGLY, THIS RIGHTS CERTIFICATE AND THE RIGHTS REPRESENTED HEREBY MAY BECOME NULL AND VOID IN THE CIRCUMSTANCES SPECIFIED IN SECTION 7(e) OF THE PLAN.]

Rights Certificate

ACACIA RESEARCH CORPORATION This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Tax Benefits Preservation Plan, dated as of March 16, 2019 (the "Plan"), between Acacia Research Corporation, a Delaware corporation (the "Company"), and Computershare Trust Company, N.A., a federally chartered trust company, as rights agent (the "Rights Agent"), to purchase from the Company at any time prior to 5:00 P.M. (New York, New York time) on March 15, 2021, unless the Rights are earlier redeemed or exchanged, at the office or offices of the Rights Agent designated for such purpose, or its successors as Rights Agent, one one-thousandth of a fully paid, nonassessable share of Series B Junior Participating Preferred Stock (the "Preferred Stock") of the Company, at a purchase price of \$12.00 per one one-thousandth of a share (the "Purchase Price"), upon presentation and surrender of this Rights Certificate with the Form of Election to Purchase and related certificate duly executed. The number of Rights evidenced by this Rights Certificate (and the number of shares which may be purchased upon exercise thereof) set forth above, and the Purchase Price per share set forth above, are the number and Purchase Price as of March 16, 2019, based on the Preferred Stock as constituted at such date. The Company reserves the right to require prior to the occurrence of a Triggering Event (as such term is defined in the Plan) that a number of Rights be exercised so that only whole shares of Preferred Stock will be issued. Capitalized terms used in this Rights Certificate without definition shall have the meanings ascribed to them in the Plan.

Upon the occurrence of a Section 11(a)(ii) Event, if the Rights evidenced by this Rights Certificate are beneficially owned by (i) an Acquiring Person or an Affiliate or Associate of any such Acquiring Person, (ii) a transferee of any such Acquiring Person, Associate or Affiliate, or (iii) under certain circumstances specified in the Plan, a transferee of a person who, after such transfer, became an Acquiring Person, or an Affiliate or Associate of an Acquiring Person, such Rights shall become null and void and no holder hereof shall have any right with respect to such Rights from and after the occurrence of such Section 11(a)(ii) Event.

As provided in the Plan, the Purchase Price and the number and kind of shares of Preferred Stock or other securities that may be purchased upon the exercise of the Rights evidenced by this Rights Certificate are subject to modification and adjustment upon the occurrence of certain events, including Triggering Events.

This Rights Certificate is subject to all of the terms, provisions and conditions of the Plan, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which the Plan reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Rights Certificates, which limitations of rights include the temporary suspension of the exercisability of such Rights under the specific circumstances set forth in the Plan. Copies of the Plan are on file at the above-mentioned office of the Company and are also available upon written request to the Company.



This Rights Certificate, with or without other Rights Certificates, upon surrender at the office or offices of the Rights Agent designated for such purpose, may be exchanged for another Rights Certificate or Rights Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of one one-thousandths of a share of Preferred Stock as the Rights evidenced by the Rights Certificate or Rights Certificates surrendered shall have entitled such holder to purchase. If this Rights Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Rights Certificate or Rights Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Plan, the Rights evidenced by this Rights Certificate may be redeemed by the Company at its option at a redemption price of \$0.001 per Right at any time prior to the earlier of the close of business on (i) the tenth (10th) Business Day following the Stock Acquisition Date (as such time period may be extended pursuant to the Plan), and (ii) the Final Expiration Date. In addition, under certain circumstances following the Stock Acquisition Date, the Rights may be exchanged, in whole or in part, for shares of the Common Stock, or shares of preferred stock of the Company having essentially the same value or economic rights as such shares. Immediately upon the action of the Board of Directors of the Company authorizing any such exchange, and without any further action or any notice, the Rights (other than Rights which are not subject to such exchange) will terminate and the Rights will only enable holders to receive the shares issuable upon such exchange.

No fractional shares of Preferred Stock will be issued upon the exercise of any Right or Rights evidenced hereby (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts), but in lieu thereof a cash payment will be made, as provided in the Plan. The Company, at its election, may require that a number of Rights be exercised so that only whole shares of Preferred Stock would be issued.

No holder of this Rights Certificate shall be entitled to vote or receive dividends or be deemed for any purpose the holder of shares of Preferred Stock or of any other securities of the Company that may at any time be issuable on the exercise hereof, nor shall anything contained in the Plan or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give consent to or withhold consent from any corporate action, or, to receive notice of meetings or other actions affecting stockholders (except as provided in the Plan), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Rights Certificate shall have been exercised as provided in the Plan.

This Rights Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the signature of a proper officer of the Company.

Dated as of _____, 20__

ACACIA RESEARCH CORPORATION

By:
Name:
Title:

Countersigned:

COMPUTERSHARE TRUST COMPANY, N.A.,
as Rights Agent

By:
Name:
Title:

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[Form of Reverse Side of Rights Certificate]

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Rights Certificate.)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto

(Please print name and address of transferee)

_____ this Rights Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ as attorney-in-fact, to transfer the within Rights Certificate on the books of the within named Company, with full power of substitution.

Dated _____, 20__

Signature

Signature Guaranteed:

NOTICE: The signature(s) must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent.

Certificate

The undersigned hereby certifies by checking the appropriate boxes that:

(1) this Rights Certificate is is not being sold, assigned and transferred by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Acquiring Person (as such terms are defined pursuant to the Plan);

(2) after due inquiry and to the best knowledge of the undersigned, it did did not acquire the Rights evidenced by this Rights Certificate from any Person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated _____, 20__

Signature

Signature Guaranteed:

NOTICE: The signature(s) must be guaranteed by an eligible guarantor institution (a bank, stockbroker, savings and loan association or credit union with membership in an approved signature guarantee medallion program) at a guarantee level satisfactory to the Rights Agent. A notary public is not sufficient.

NOTICE

The signature to the foregoing Assignment and Certificate must correspond to the name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above is not completed in connection with a purported assignment, the Company may deem the Beneficial Owner of the Rights evidenced by the attached Rights Certificate to be an Acquiring Person or an Affiliate or Associate thereof or a transferee of any of the foregoing and accordingly may deem the Rights evidenced by such Rights Certificate to be null and void and not transferable or exercisable.

The signature(s) must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent.

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FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to exercise Rights represented by the Rights Certificate.)

To: ACACIA RESEARCH CORPORATION:

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Rights Certificate to purchase the shares of Preferred Stock issuable upon the exercise of the Rights (or such other securities of the Company or of any other person which may be issuable upon the exercise of the Rights) and requests that certificates for such shares be issued in the name of and delivered to:

Please insert social security
or other identifying number

(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Rights Certificate, a new Rights Certificate for the balance of such Rights shall be registered in the name of and delivered to:

Please insert social security
or other identifying number

(Please print name and address)

Dated _____, 20__

Signature

Signature Guaranteed:

NOTICE: The signature(s) must be guaranteed by an eligible guarantor institution (a bank, stockbroker, savings and loan association or credit union with membership in an approved signature guarantee medallion program) at a guarantee level satisfactory to the Rights Agent. A notary public is not sufficient.

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Certificate

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Rights evidenced by this Rights Certificate are are not being exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Acquiring Person (as such terms are defined pursuant to the Plan);

(2) after due inquiry and to the best knowledge of the undersigned, it did did not acquire the Rights evidenced by this Rights Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated _____, 20__

Signature

Signature Guaranteed:

NOTICE: The signature(s) must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent.

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NOTICE

The signature to the foregoing Election to Purchase and Certificate must correspond to the name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above is not completed in connection with a purported exercise, the Company may deem the Beneficial Owner of the Rights evidenced by the attached Rights Certificate to be an Acquiring Person or an Affiliate or Associate thereof or a transferee of any of the foregoing and accordingly may deem the Rights evidenced by such Rights Certificate to be null and void and not transferable or exercisable.

The signature(s) must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent.

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AS SET FORTH IN THE TAX BENEFITS PRESERVATION PLAN, RIGHTS ISSUED OR TRANSFERRED TO, OR BENEFICIALLY OWNED BY, ANY PERSON THAT IS, WAS OR BECOMES AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE TAX BENEFITS PRESERVATION PLAN), WHETHER CURRENTLY BENEFICIALLY OWNED BY OR ON BEHALF OF SUCH PERSON OR BY ANY SUBSEQUENT HOLDER, MAY BE NULL AND VOID

SUMMARY OF TERMS

ACACIA RESEARCH CORPORATION
TAX BENEFITS PRESERVATION PLAN

Purpose	Acacia Research Corporation (the "Company") has certain U.S. federal and state income tax net operating loss carryforwards. The Internal Revenue Code of 1986, as amended (the "Code") limits the ability of a company to use its net operating losses and certain other tax assets ("Tax Benefits") to reduce potential future federal income tax obligations if such company experiences an "ownership change," as defined in Section 382 of the Code. A company generally experiences such an ownership change if the percentage of its stock owned by its "5-percent shareholders," as defined in Section 382 of the Code, increases by more than 50 percentage points over a rolling three-year period. The Plan is intended to act as a deterrent to any person or group, together with its affiliates and associates, being or becoming the beneficial owner of 4.9% or more of the common stock, par value \$0.001 per share, of the Company (the "Common Stock").
Form of Security	On March 12, 2019, the Board of Directors of the Company (the "Board"), authorized and declared a dividend distribution of one right (a "Right") for each outstanding share of the common stock of the Company with \$0.001 par value (the "Common Stock") to stockholders of record at the close of business on March 16, 2019 (the "Record Date"). Each Right entitles the registered holder to purchase from the Company a unit consisting of one one-thousandth of a share (a "Unit") of a series of Series B Junior Participating Preferred Stock, par value \$0.001 (the "Preferred Stock"), at a purchase price of \$12.00 per Unit, subject to adjustment (the "Purchase Price").

Rights Certificates	<p>Initially, the Rights will be attached to all shares of Common Stock then outstanding, and no separate rights certificates ("Rights Certificates") will be distributed.</p> <p>Until a Distribution Date (as defined below), (i) the Rights will be evidenced by the certificates for the Common Stock (or, in the case of shares reflected on the direct registration system, by the notations in the book-entry account system) and will only be transferred with such Common Stock, (ii) new Common Stock certificates issued after the Record Date will contain a legend incorporating the Plan by reference and (iii) the surrender for transfer of any certificates for Common Stock outstanding will also constitute the transfer of the Rights associated with the Common Stock represented by such certificates.</p> <p>As soon as practicable after a Distribution Date, Rights Certificates will be mailed to holders of record of the Common Stock as of the close of business on a Distribution Date and, thereafter, the separate Rights Certificates alone will represent the Rights. Except as otherwise determined by the Board, only shares of Common Stock issued prior to a Distribution Date will be issued with the Rights.</p>
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Exercise Period	<p>Prior to a Distribution Date (as defined below), the Rights are not exercisable.</p> <p>Subject to certain exceptions specified in the Plan, the Rights will separate from the Common Stock and a distribution date (a "Distribution Date") will occur upon the earlier of (i) ten (10) business days following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has acquired beneficial ownership of 4.9% or more of the outstanding shares of Common Stock (the "Stock Acquisition Date"), other than as a result of (x) repurchases of stock by the Company, (y) a stock dividend, stock split, reverse stock split or similar transaction or (z) certain inadvertent actions by certain stockholders; and (ii) ten (10) business days (or such later date as the Board shall determine) following the commencement after the date of the Plan of a tender offer or exchange offer that, if consummated, would result in a person or group becoming an Acquiring Person. However, no person who, at the time of the first public announcement of the Plan, beneficially owned 4.9% or more of the outstanding shares of Common Stock will be deemed an Acquiring Person, unless and until such person acquires beneficial ownership of additional shares of Common Stock, with certain exceptions. In addition, no person who beneficially owns 4.9% or more of the outstanding shares of Common Stock will be deemed an Acquiring Person if the Board, in its sole discretion, so determines in light of the intent and purposes of the Plan or other circumstances facing the Company. For purposes of the Plan, beneficial ownership is defined to include any securities which a person would be deemed to constructively own or which otherwise would be aggregated with shares owned by a person pursuant to Section 382 of the Code.</p> <p>Pursuant to the Plan, the Company reserves the right to require prior to the occurrence of a Triggering Event (as defined below) that, upon any exercise of Rights, a number of Rights be exercised so that only (i) whole shares of Common Stock or (ii) whole shares of Preferred Stock and fractional shares of Preferred Stock that are integral multiples of one one-thousandth of a share of Preferred Stock will be issued.</p>
Expiration	<p>The Rights will expire on the earliest of (i) 5:00 P.M., New York, New York time, on March 15, 2021, (ii) the time at which the Rights are redeemed pursuant to the Plan, (iii) the time at which the Rights are exchanged pursuant to the Plan, (iv) the close of business on the effective date of the repeal of Section 382 or any successor statute if the Board determines that the Plan is no longer necessary or desirable for the preservation of Tax Benefits or (v) the close of business on the first day of a taxable year of the Company to which the Board determines that Tax Benefits may not be carried forward.</p>

Flip-in Trigger	If any person or group of affiliated or associated persons becomes an Acquiring Person, each holder of a Right (other than Rights owned by an Acquiring Person, its affiliates, associates or certain transferees, which will become void) will thereafter have the right to receive, upon exercise, Common Stock (or, in certain circumstances, cash, property or other securities of the Company (including the Preferred Stock)) having a value equal to two times the exercise price of the Right. However, Rights are not exercisable following the occurrence of the event set forth above until such time as the Rights are no longer redeemable by the Company as set forth below.
Flip-over Trigger	If, at any time following the Stock Acquisition Date, (i) the Company engages in a merger or other business combination transaction in which the Company is not the surviving corporation, (ii) the Company engages in a merger or other business combination transaction in which the Company is the surviving corporation and the Common Stock of the Company is changed or exchanged, or (iii) fifty percent (50%) or more of the Company's assets, cash flow or earning power is sold or transferred, each holder of a Right (except Rights which have previously been voided as set forth above) shall thereafter have the right to receive, upon exercise, common stock of the acquiring company having a value equal to two times the exercise price of the Right. The events set forth in this paragraph and in the paragraph under the heading "Flip-in Trigger" are referred to as the "Triggering Events."
Exchange Feature	At any time after a person or group of affiliated or associated persons becomes an Acquiring Person and prior to the acquisition by such person or group of fifty percent (50%) or more of the outstanding Common Stock, the Board may, in lieu of allowing Rights to be exercised, exchange the Rights (other than Rights owned by such person or group that have become null and void), in whole or in part, for Common Stock or Preferred Stock at an exchange ratio (the "Exchange Ratio") of one share of Common Stock, or one one-thousandth of a share of Preferred Stock (or of a share of a class or series of the Company's preferred stock having equivalent rights, preferences and privileges), per Right (subject to adjustment). Immediately upon the action of the Board ordering the exchange of any Rights, the right to exercise such Rights will terminate and the only right thereafter of the holder of such Right will be to receive the Exchange Ratio.
Equitable Adjustments	<p>The Purchase Price payable, and the number of Units of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a dividend on the Preferred Stock payable in shares of Preferred Stock, a subdivision or split of outstanding shares of Preferred Stock, a combination or consolidation of Preferred Stock into a smaller number of shares through a reverse stock split or otherwise, or reclassification of the Preferred Stock, (ii) if holders of the Preferred Stock are granted certain rights, options or warrants to subscribe for Preferred Stock or convertible securities at less than the current market price of the Preferred Stock, or (iii) upon the distribution to holders of the Preferred Stock of cash (excluding regular quarterly cash dividends), assets, evidences of indebtedness or of subscription rights or warrants (other than those referred to above).</p> <p>With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments amount to at least one percent (1%) of the Purchase Price. The Company will not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock). In lieu of the issuance of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company may pay to the holders of Rights Certificates at the time such Rights are exercised an amount in cash equal to the same fraction of the current market value (based on the market price of the Preferred Stock on the last trading date prior to exercise) of one one-thousandth of a share of Preferred Stock.</p>



Redemption Rights	At any time until the earlier of (i) ten business days following the Stock Acquisition Date or (ii) March 15, 2021, the Board may redeem all (but not less than all) the Rights at a price (subject to adjustment) of \$0.001 per Right (payable in cash, Common Stock or other consideration deemed appropriate by the Board). Immediately upon the action of the Board ordering redemption of the Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the \$0.001 redemption price.
Amendment	Prior to a Distribution Date, the provisions of the Plan may be amended or supplemented by the Company (acting through the Board) and the Rights Agent, other than to extend the final expiration date of the Rights, without the approval of any holders of shares of Common Stock. After a Distribution Date, the provisions of the Plan may be amended by the Company (acting through the Board) and the Rights Agent in order to cure any ambiguity, to correct or supplement any provision that may be defective or inconsistent with any other provisions of the Plan, to make changes that do not adversely affect the interests of holders of Rights, or to shorten or lengthen any time period under the Plan, except that the Plan may not be amended to extend the final expiration date of the Rights without stockholder approval. Notwithstanding the foregoing, no amendment may be made at such time as the Rights are not redeemable, except for certain limited technical amendments, including to cure any ambiguity or correct or supplement any provision contained in the Plan which may be defective or inconsistent with any other provision therein.
Anti-Takeover Effects	The Rights may have certain anti-takeover effects. The Rights may cause substantial dilution to any person or group that attempts to acquire the Company without the approval of the Board. As a result, the overall effect of the Rights may be to render more difficult or discourage a merger, tender offer or other business combination involving the Company that is not supported by the Board.
Miscellaneous	Until a Right is exercised, the holder thereof, as such, will have no separate rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends in respect of the Rights. Although the distribution of the Rights will not be taxable to stockholders or to the Company for U.S. federal income tax purposes, stockholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Common Stock (or other consideration) of the Company or for common stock of the acquiring company or in the event of the redemption of the Rights as set forth above.

A copy of the Plan has been or will be filed with the Securities and Exchange Commission as an Exhibit to a Registration Statement on Form 8-A or a Current Report on Form 8-K. A copy of the Plan is available free of charge from the Company. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Plan, which is incorporated herein by reference.

[INSERT PROXY CARD]



