

**CERTIFICATE OF INCORPORATION
OF
MODA PARTNERS, INC.**

CERTIFICATE OF INCORPORATION
OF
MODA PARTNERS, INC.

FIRST: The name of this corporation is Moda Partners, Inc. (the "**Corporation**").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

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

FOURTH: The Corporation is authorized to issue 40,000 shares of capital stock in one class of stock to be designated "**Common Stock**" with a par value of \$0.0001 per share. The Common Stock shall be divided into two (2) series designated respectively "**Class A Common Stock**" and "**Class B Common Stock**". The total number of shares of Class A Common Stock that the Corporation is authorized to issue is 20,000 shares, and the total number of shares of Class B Common Stock that the Corporation is authorized to issue is 20,000 shares. The Original Issue Price of the Common Stock shall be \$15,392.50 per share.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of the Common Stock of the Corporation.

A. Voting.

1. General. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders and in any action taken by written consent of stockholders in lieu of a meeting of the stockholders (a "**Written Consent**").

2. Election of Directors. The size of the Corporation's board of directors ("**Board of Directors**") shall be fixed at five (5) directors (each a "**Director**"). The holders of record of the shares of Class A Common Stock, exclusively and as a separate class, shall be entitled to elect two (2) Directors (each a "**Class A Director**"). The holders of record of the shares of Class B Common Stock, exclusively and as a separate class, shall be entitled to elect two (2) Directors (each a "**Class B Director**"). The holders of record of the shares of Common Stock (including the Class A Common Stock and Class B Common Stock), exclusively and voting together as a single class, shall be entitled to elect one (1) additional Director. Any Director elected in accordance with the foregoing may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the series of Common Stock entitled to elect such Director, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a Written Consent. If the holders of shares of Class A Common Stock or Class B Common Stock, as the case may be, fail to elect a sufficient number of Directors to fill all directorships for which they are entitled to elect Directors, voting exclusively and as a separate class, pursuant to this section, then any directorship not so filled shall remain vacant

until such time as the holders of the Class A Common Stock or Class B Common Stock, as the case may be, elect a person to fill such directorship by vote or by Written Consent; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. At any meeting held for the purpose of electing a Director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such Director shall constitute a quorum for the purpose of electing such Director.

3. Protective Provisions. The Corporation shall not, either directly or indirectly by amendment, merger, consolidation, or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate of Incorporation) the consent or affirmative vote of the holders of not less than two-thirds (2/3) of the then-outstanding shares of Common Stock (a "**Majority in Interest**") given by Written Consent or by vote at a meeting, consenting or voting (as the case may be), and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

3.1 liquidate, dissolve or wind-up the business and affairs of the Corporation, any corporation, partnership, limited liability company or other entity of which the Corporation owns, directly or indirectly, fifty percent (50%) or more of the outstanding equity, voting power or financial interests (each, a "**Subsidiary**"), or any corporation, partnership, limited liability company or other entity of which the Corporation owns, directly or indirectly, more than twenty percent (20%) but less than fifty percent (50%), of the outstanding equity, voting power or financial interests (each, an "**Affiliate**"), effect any merger, acquisition, or consolidation, of the Corporation or any Subsidiary or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates, including through an exclusive license, sale, lease, transfer or other disposition (in a single transaction or a series of related transactions) of all or substantially all of the assets or intellectual property of such entity (collectively, a "**Liquidation Event**"), or consent to a Liquidation Event;

3.2 amend, alter or repeal any provision of this Certificate of Incorporation or Bylaws of the Corporation or any Subsidiary (or, if applicable, the certificate or articles of organization of any Subsidiary, or the limited liability company agreement or operating agreement of any Subsidiary), or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates; *provided, however* that notwithstanding the foregoing, the approval of a majority of the Board of Directors that includes the consent of at least one (1) Class A Director and one (1) Class B Director (a "**Special Board Majority**") shall be sufficient to approve an amendment, alteration or repeal without the consent of a Majority in Interest if such amendment, alteration or repeal (i) affects all classes and series of Common Stock in exactly the same manner by its terms or (ii) corrects any typographical or similar ministerial errors or makes any other non-material changes to the Certificate of Incorporation or Bylaws of the Corporation or any Subsidiary or Affiliate;

3.3 (i) create, or authorize the creation of, or issue or obligate itself to issue (a) shares of any additional capital stock of the Corporation or (b) shares of any additional capital stock, or any membership, units or other equity interest of, Subsidiaries or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates, or (ii) increase the authorized number of shares of any class or series of capital stock of the Corporation or shares of any additional class or series of capital stock, or any membership, units or other equity

interest of, any Subsidiaries or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates;

3.4 purchase or redeem (or permit any Subsidiary to purchase or redeem or vote the Corporation's interests for the approval of such a purchase or redemption with respect to Affiliates), or pay or declare any dividend on, or make any distribution on, any shares of capital stock of the Corporation or any shares of capital stock or other equity interest of Subsidiary or Affiliate, unless approved by a Special Board Majority.

3.5 create, or authorize the creation of, or issue, or authorize the issuance of any debt securities, or permit any Subsidiary to take any such action with respect to any debt security, if the aggregate indebtedness of the Corporation and/or any Subsidiary for borrowed money following such action would exceed \$5,000,000, or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates, unless such debt security has been approved by a Special Board Majority;

3.6 enter into any Material Transaction, including without limitation any material loan, with a Subsidiary or Affiliate, or amend, modify or waive any material rights or obligations between the Corporation and any Subsidiary or Affiliate, unless such transaction has been approved by a Special Board Majority. The term "**Material Transaction**" means, with respect to the Corporation and each Subsidiary, any: (i) transaction in the ordinary course of business that requires the approval of regulatory authorities; (ii) satisfaction or discharge of any lien, claim, or encumbrance or payment of any obligation by the Corporation or a Subsidiary, except in the ordinary course of business and the satisfaction or discharge of which would not have a material adverse effect; (iii) declaration, setting aside or payment or other distribution in respect of any of the Corporation's capital stock or the capital stock of a Subsidiary, or any direct or indirect redemption, purchase, or other acquisition of any of such stock by the Corporation; (iv) sale, assignment or transfer of any assets of the Corporation or a Subsidiary having a fair market value in excess of \$500,000; or (v) other transaction outside the ordinary course of business in which the aggregate consideration payable by or to the Corporation exceeds \$1,000,000, or more than \$500,000 in aggregate consideration payable by or to any Subsidiary of the Corporation.

3.7 increase or decrease, or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates, the authorized number of (i) Directors constituting the Board of Directors or (ii) directors or managers constituting the board of directors or board of managers of any Subsidiary or Affiliate;

3.8 create or acquire capital stock or debt in, any Affiliate or any Subsidiary that is not wholly owned (either directly or through one or more other Subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any Subsidiary or Affiliate, or authorize or consent to any of the foregoing by any Subsidiary or Affiliate, in each case, unless approved by a Special Board Majority;

3.9 guarantee any debt of the Corporation or any Subsidiary or Affiliate, or encumber or grant a security interest in all or substantially all of the assets of the Corporation or any Subsidiary or Affiliate in connection with any indebtedness of any such entities, if, in either case, the aggregate indebtedness guaranteed or secured exceeds \$5,000,000;

3.10 hire, terminate without cause, or modify the compensation of any senior executive officer of the Corporation or any Subsidiary in a manner materially inconsistent with past practices, or enter into any loan or guarantee transaction with any director or senior executive officer of the Corporation or any Subsidiary, or vote the Corporation's interests for the approval of any of the foregoing with respect to Affiliates, unless approved by a Special Board Majority;

3.11 sell, assign, license, pledge, use as collateral or encumber any of the material technology or intellectual property, other than licenses granted in the ordinary course of business, of the Corporation or any Subsidiary, or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates, unless approved by a Special Board Majority;

3.12 change the principal business of the Corporation or a Subsidiary, or vote the Corporation's interests for the approval of the foregoing with respect to Affiliates, unless approved by a Special Board Majority; or

3.13 enter into a strategic relationship involving any payment or contributions in excess of \$5,000,000, unless approved by a Special Board Majority.

B. Actions Requiring the Unanimous Consent of the Stockholders. The Corporation shall not, either directly or indirectly, by amendment, merger, consolidation, or otherwise, require a holder of Common Stock to (i) purchase additional shares of capital stock or debt of the Corporation or (ii) otherwise contribute additional capital to the Corporation.

C. Redemption. At the election of holders of a majority of the then outstanding shares of Class B Common Stock, the Corporation shall redeem all (but not less than all) of the Class B Common Stock, out of funds legally available therefor, on the terms and subject to the conditions set forth in a written agreement executed by the Corporation and by the holders of Class A Common Stock and Class B Common Stock.

D. Waiver. Any of the rights, powers, preferences and other terms of a class or series of the Common Stock set forth herein may be waived on behalf of all holders of such class or series of Common Stock by the affirmative Written Consent or vote of the holders of at least two thirds (2/3) of the shares of such class or series of Common Stock then outstanding.

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

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

SIXTH: Elections of Directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

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

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

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

NINTH: The following indemnification provisions shall apply to the persons enumerated below.

1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "**Indemnified Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a Director or officer of the Corporation or, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

2. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding (other than a Proceeding brought directly by the Corporation) in advance of its final disposition; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article or otherwise.

3. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article is not paid in full within thirty (30) days after a

written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

4. Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

5. Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorneys' fees) incurred by an employee or agent in defending any Proceeding (other than a Proceeding brought directly by the Corporation) in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

6. Non-Exclusivity of Rights. The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, the Bylaws of the Corporation, or any agreement, or pursuant to any vote of stockholders or disinterested Directors or otherwise.

7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

8. Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of Directors, officers and employees under the provisions of this Article; and (b) to indemnify or insure Directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article.

9. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any

person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

TENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any Director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its Directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its Directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article (including, without limitation, each portion of any sentence of this Article containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this ___ day of _____, 2018.

By: _____
Robert Gootee, Chief Executive Officer