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

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**FORM 8-K**

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**CURRENT REPORT**  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934

**September 22, 2016**  
Date of Report (Date of earliest event reported)

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**GALECTIN THERAPEUTICS INC.**  
(Exact Name of Registrant as Specified in Charter)

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**NEVADA**  
(State or Other Jurisdiction  
of Incorporation)

**001-31791**  
(Commission  
File Number)

**04-3562325**  
(IRS Employer  
Identification No.)

**4960 PEACHTREE INDUSTRIAL BOULEVARD, STE 240**  
**NORCROSS, GA 30071**  
(Address of Principal Executive Offices) (Zip Code)

**(678) 620-3186**  
(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Item 1.01. Entry into a Material Definitive Agreement.

### Securities Purchase Agreement

On September 22, 2016, Galectin Therapeutics Inc., a Nevada corporation (the “Company”) entered into a Securities Purchase Agreement (the “Purchase Agreement”) with 10X Fund, L.P., a Delaware limited partnership (“Purchaser”). Pursuant to the Purchase Agreement, the Company has agreed to issue and sell to Purchaser, and Purchaser has agreed to purchase from the Company at closings held or to be held on September 22, 2016 and September 29, 2016 (i) an aggregate of 1,500,000 shares of the Company’s Series B-3 Convertible Preferred Stock (the “Series B-3 Preferred Stock”) with an aggregate stated value of \$1,500,000 million and convertible into such number of shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”) determined by dividing (A) \$1.00 plus any accrued but unpaid dividends by (B) the closing price of the Common Stock on the day prior to issuance of the Series B-3 Preferred Stock plus \$0.09375, and (ii) warrants to purchase 0.75 shares of Common Stock for every share of Common Stock into which the Series B-3 Preferred Stock is convertible (the “Series B-3 Warrants”). The terms and conditions of the Series B-3 Preferred Stock are more fully described below under “Terms of the Series B-3 Preferred Stock.” The terms and conditions of the warrants are more fully described below under “Terms of the Common Stock Purchase Warrants”. Of the 6,000,000 shares of Series B-3 Preferred Stock authorized on September 22, 2016, 1,500,000 have been or will be issued and sold under the Purchase Agreement. By amending the Purchase Agreement the Company may also issue and sell to Purchaser all or part of the remaining 4,500,000 shares of Series B-3 Preferred Stock at closings occurring after September 29, 2016 (the “Subsequent Closings”).

On September 22, 2016, the initial closing date under the Purchase Agreement, the Company issued and sold to Purchaser: (i) 375,000 shares of Series B-3 Preferred Stock convertible into 139,211 shares of Common Stock; and (ii) Series B-3 Warrants exercisable to purchase 104,408 share of Common Stock. The remaining 1,125,000 shares of Series B-3 Preferred Stock will be issued on Thursday, September 29, 2016, with the conversion price and the number of Series B-3 Warrants to be issued determined by the closing price of the Common Stock on Wednesday, September, 28, 2016, plus \$0.09375.

In addition, pursuant to a Lock-Up Agreement entered into between the Company and Purchaser, as consideration for the Purchaser’s agreement not to sell any shares of Series B Preferred Stock (as defined below) for a period of 18 months, subject to certain exceptions, the Company issued to the Purchaser warrants to purchase 500,000 shares of the Common Stock and agreed to issue additional warrants to purchase up to such additional shares of Common Stock in connection with sales of B-3 Preferred Stock equal to the product of 500,000 shares multiplied by a fraction, the numerator of which is the aggregate purchase price paid to the Company in the applicable sale of Series B-3 Preferred Stock and the denominator of which is \$6,000,000, of which warrants to purchase 125,000 shares of Common Stock were or will be issued in connection with the initial sale of Series B-3 Preferred Stock for \$1,500,000.

Pursuant to the Purchase Agreement, as additional consideration for the lock-up described above, the Company further agreed to issue warrants to purchase up to such additional shares of Common Stock in connection with sales of Series B-3 Preferred Stock equal to 0.1667 times the purchase price paid for the Series B-3 Preferred Stock, up to 1,000,000 shares in the aggregate, of which warrants to purchase 250,000 shares of Common Stock were or will be issued in connection with the initial sale of Series B-3 Preferred Stock for \$1,500,000 (collectively, such warrants together with the warrants issuable pursuant to the Lock-Up Agreement, the “Lock-Up Warrants”). The aggregate number of shares of Common Stock issuable upon the exercise of all Lock-Up Warrants, including warrants that may be issued upon any Subsequent Closing will not exceed 2,000,000 shares.

Pursuant to the Purchase Agreement, the Company has granted Purchaser certain rights to participate in certain future equity financings of the Company.

The Purchase Agreement contains customary representations, warranties, covenants and closing conditions by and among the parties. Upon any Subsequent Closing under the Purchase Agreement, such representations and warranties must be accurate in all material respects, such covenants must have been performed and such closing conditions must have been satisfied or waived, including without limitation no material adverse effect having occurred with respect to the Company prior to any Subsequent Closing.

The Company expects that any Subsequent Closing will occur on or before November 22, 2016 (the “Final Purchase Date”). However, such date may be extended.

The foregoing description of the Purchase Agreement is not complete and is qualified in its entirety by reference to the full text of the Purchase Agreement, a copy of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### ***Terms of the Series B-3 Preferred Stock***

The Second Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Preferred Stock (the “Certificate of Designations”) removes the ability of the Series B Preferred Stock to cause a redemption of the shares of Series B Preferred Stock and also adds Series B-3 Preferred Stock as an additional subseries of Series B Preferred Stock, which has the same rights and privileges as the Series B-1 Preferred Stock and the Series B-2 Preferred Stock except for the following items:

*Dividends.* The holders of Series B-3 Preferred Stock will be entitled to receive cumulative dividends at the rate of 8% per share per annum (compounding monthly) payable quarterly. At the Company’s option, the dividends may be paid in cash or Common Stock valued per share at 100% of the value weighted average price per share for the 20 consecutive trading days prior to the applicable dividend payment date; provided, however, that there is an effective registration statement covering the shares of Common Stock and the issuance of the shares does not trigger anti-dilution provisions under other agreements to which the Company is a party. If the Company does not pay any dividend on the Series B-3 Preferred Stock, dividends will accrue at the rate of 15% per annum (compounding monthly).

*Convertibility.* Each share of Series B-3 Preferred Stock is convertible, at the option of the Holder at any time, into such number of shares of Common Stock, into by dividing (A) \$1.00 plus any accrued but unpaid dividends by (B) the closing price of the Common Stock prior to issuance of the Series B-3 Preferred Stock plus \$0.09375.

The foregoing description of the Certificate of Designations is not complete and is qualified in its entirety by reference to the full text of the Certificate of Designations, a copy of which is filed herewith as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### ***Terms of the Common Stock Purchase Warrants***

The warrants issued under the Purchase Agreement provide for the following terms and conditions.

*Term; Exercise Price.* Each Series B-3 Warrant is exercisable at \$3.00 per share of Common Stock or such lesser amount (but not less than the closing price of the Common Stock on the trading day prior to the day of the issuance of the Warrants) that the parties later agree (subject to customary anti-dilution protection adjustments) at any time on or after the date of issuance until the seventh anniversary of the respective issue date.

The foregoing description of the warrants is not complete and is qualified in its entirety by reference to the full text of the Securities Purchase Agreement and the Form of Series B-3 Warrant, a copy of each of which is filed herewith as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### ***Terms of the Lock-Up Warrants***

The warrants issued under the Purchase Agreement provide for the following terms and conditions.

*Term; Exercise Price.* Each Lock-Up Warrant is exercisable at \$3.00 per share of Common Stock or such lesser amount (but not less than the closing price of the Common Stock on the trading day prior to the day of the issuance of the Warrants) that the parties later (subject to customary anti-dilution protection adjustments) at any time on or after the date of issuance until the seventh anniversary of the respective issue date.

The foregoing description of the warrants is not complete and is qualified in its entirety by reference to the full text of the Securities Purchase Agreement, the Lock-Up Agreement and the Form of Lock-Up Warrant, a copy of each of which is filed herewith as Exhibit 4.2 to this Current Report on Form 8-K and is incorporated herein by reference.

### Registration Rights Agreement

On September 22, 2016, the Company entered into a Registration Rights Agreement with Purchaser (the “Registration Rights Agreement”). Pursuant to the Registration Rights Agreement, the Company agreed to use its commercially reasonable efforts to (i) register for resale under the Securities Act of 1933, as amended (the “Securities Act”), all shares of Common Stock underlying (x) the Series B-3 Preferred Stock (including shares of Common Stock issued as a dividend thereon) and (y) the warrants issued under the Purchase Agreement and (ii) keep the registration statement effective for a period of ninety (90) days or until such registrable securities have been sold. The Company has agreed to pay all registration expenses incurred by it in connection with the registration.

The foregoing description of the Registration Rights Agreement is not complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, a copy of which is filed herewith as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

### Lock-Up Letter Agreement

On September 22, 2016, the Company entered into a Lock-Up Letter Agreement with Purchaser (the “Lock-Up Agreement”). Pursuant to the Lock-Up Agreement, the Purchaser agreed that for a period of 18 months (the “Lock-Up Period”) it would not sell, subject to certain limited exceptions, the Series B-3 Preferred shares or Common Stock it acquired in connection with the purchase agreement or the securities acquired purchase to the Securities Purchase Agreement between the Company and 10X Fund dated February 12, 2009. As consideration for such lock-up, the Company agreed to issue the Lock-Up Warrants.

The foregoing description of the Lock-Up Agreement is not complete and is qualified in its entirety by reference to the full text of the Lock-Up Agreement, a copy of which is filed herewith as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

### **Item 3.02. Unregistered Sales of Equity Securities.**

The information contained in Item 1.01 of this report with under the caption “Securities Purchase Agreement” is incorporated by reference into this Item 3.02.

At the initial closings under the Purchase Agreement the Series B-3 Preferred Stock and warrants were or will be, and upon each Subsequent Closings under the Purchase Agreement the Series B-3 Preferred Stock and warrants will be, issued in reliance upon the exemption from registration under Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder. At the initial closings under the Purchase Agreement the Series B-3 Preferred Stock and warrants were not or will not be, and upon each Subsequent Closings under the Purchase Agreement the Series B-3 Preferred Stock and warrants will not be, registered under the Act and will be “restricted securities” as such term is defined by Rule 144 under the Securities Act.

### **Item 3.03. Material Modification of Rights of Security Holders.**

The information contained in Item 1.01 of this report under the caption “Securities Purchase Agreement — Terms of the Series B-3 Preferred Stock” is incorporated by reference into this Item 3.03.

### **Item 5.03. Amendments to Certificate of Incorporation or Bylaws; Change in Fiscal Year.**

On September 22, 2016, the Company filed with the Secretary of State of the State of Nevada a Second Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Convertible Preferred Stock, establishing the terms of the Series B-3 Preferred Stock. A copy of the Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Convertible Preferred Stock is included as an exhibit to this report and is incorporated by reference into this Item 5.03.

On September 22, 2016, the Board of Directors adopted amendments to the Bylaws of the Company, pursuant to which the directors will be elected to the board by a plurality of votes cast by each of the holders of the shares of capital stock present and entitled to vote at the meeting.

**Item 8.01. Other Events.**

On September 27, 2016, the Company issued news releases describing the private placement and the results of the Company's NASH-FX clinical trial. A copy of the Company's press release is attached as Exhibits 99.1 hereto and incorporated by reference into this Item 8.01.

**Item 9.01. Financial Statements and Exhibits.**

(a) *Financial Statements of Businesses Acquired.*

Not applicable.

(b) *Pro Forma Financial Information.*

Not applicable.

(c) *Shell Company Transactions.*

Not applicable.

(d) *Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Convertible Preferred Stock.
4.1	Form of Class B-3 Common Stock Purchase Warrant.
4.2	Form of Lock-Up Common Stock Purchase Warrant
5.3	Bylaws, as amended
10.1	Securities Purchase Agreement dated September 22, 2016 between the Company and Purchaser.
10.2	Registration Rights Agreement dated September 22, 2016 between the Company and Purchaser.
10.3	Lock-Up Agreement dated September 22, 2016 between the Company and Purchaser.
99.1	Press release dated September 27, 2016.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

GALECTIN THERAPEUTICS INC.

By: /S/ Peter G. Traber, MD

Name: Peter G. Traber, MD

Title: Chief Executive Officer and President

Date: September 27, 2016

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Convertible Preferred Stock.
4.1	Form of Class B Common Stock Purchase Warrant.
4.2	Form of Lock-Up Common Stock Purchase Warrant.
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10.2	Registration Rights Agreement dated September 22, 2016 between the Company and Purchaser.
10.3	Lock-Up Agreement dated September 22, 2016 between the Company and Purchaser.
99.1	Press release dated September 27, 2016.

**GALECTIN THERAPEUTICS, INC.**  
**SECOND AMENDED AND RESTATED**  
**CERTIFICATE OF DESIGNATION OF PREFERENCES,**  
**RIGHTS AND LIMITATIONS**  
**OF**  
**SERIES B-1 CONVERTIBLE PREFERRED STOCK,**  
**SERIES B-2 CONVERTIBLE PREFERRED STOCK,**  
**AND**  
**SERIES B-3 CONVERTIBLE PREFERRED STOCK**  
**PURSUANT TO SECTION 78.56 OF THE**  
**NEVADA GENERAL CORPORATION LAW**

The undersigned, Peter G. Traber, MD, does hereby certify that:

1. He is the Chief Executive Officer and President of Galectin Therapeutics, Inc., a Nevada corporation (the "Corporation").
2. The Corporation is authorized to issue 20,000,000 shares of undesignated stock, par value \$0.01 per share, of which 900,000 have been designated for issuance as Series B-1 Convertible Preferred Stock, 2,100,000 have been designated for issuance as Series B-2 Convertible Preferred Stock and 6,000,000 have been designated for issuance as one or more series of Series B-3 Convertible Preferred Stock (collectively, the "Series B Preferred Stock").
3. On September 20, 2016, the Board of Directors of the Corporation voted to approve, subject to the approval of 10X Fund, L.P. ("10X Fund"), the sole holder of the issued and outstanding shares of Series B Preferred Stock (the "Agreement"), certain amendments to the Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock and Series B-2 Convertible Preferred Stock (the "Prior Certificate of Designation"), and to file a second amended and restated Certificate of Designation, which incorporates the amendments approved on September 20, 2016, and prior amendments thereto and which will be the Second Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Convertible Preferred Stock (this "Certificate of Designation").
4. As of September 22, 2016, there were 900,000 shares of Series B-1 Convertible Preferred Stock outstanding, all of which voted to approve the following amendments, and 2,100,000 shares of Series B-2 Convertible Preferred Stock outstanding, all of which voted to approve the following amendments.
5. There is no class or series of stock which is senior to the Series B Preferred Stock as to the payment of distributions upon dissolution of the Corporation, and therefore the approval of any other class or series of stock of the Corporation to the amendments to the Prior Certificate of Designation is not required pursuant to NRS 78.1955(3).



6. The Prior Certificate of Designation is hereby amended and restated in the following manner:

#### TERMS OF SERIES B-1, B-2 and B-3 CONVERTIBLE PREFERRED STOCK

Section 1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Series B-1 and B-2 Purchase Agreement shall have the meanings given such terms in the Series B-1 and B-2 Purchase Agreement. For the purposes hereof, the following terms shall have the following meanings:

“Commission” means the Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter have been reclassified or changed into.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value plus all accrued but unpaid dividends on the Preferred Stock being converted as of the Conversion Date.

“Conversion Date” shall have the meaning set forth in Section 5(a).

“Conversion Price” shall have the meaning set forth in Section 5(b).

“Conversion Shares” means, collectively, the shares of Common Stock into which the shares of Preferred Stock are convertible in accordance with the terms hereof.

“Dividend Shares” means, collectively, the shares of Common Stock which the Corporation may issue to a Holder in payment of dividends due on the Preferred Stock from time to time in accordance with the terms hereof.

“Dividend Payment Date” shall have the meaning set forth in Section 3(a).

“Effective Date” means the date that the Registration Statement is declared effective by the Commission.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers, directors or other permitted grantees of the Corporation pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise, exchange or conversion price of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person which is, itself or through its subsidiaries, an operating company in a business compatible with the business objectives of the Corporation and in which the Corporation receives benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and (d) securities pursuant to written contractual obligations entered into prior to the Initial Closing Date which have been approved in writing by the Holder.

“Holder” means a holder of Preferred Stock.

“Indebtedness” means (a) any liabilities for borrowed money or amounts owed in excess of \$100,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation’s balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (c) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP.

“Liens” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Notice of Conversion” shall have the meaning given such term in Section 5(a).

“Original Issue Date” shall mean the date of the first issuance of each issuance of shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“Permitted Indebtedness” means the Indebtedness existing on the Initial Closing Date and approved in writing by the Holder.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Corporation) have been established in accordance with GAAP; (b) Liens imposed by law which were incurred in the ordinary course of the Corporation’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Corporation’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Corporation and its consolidated subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien; (c) Liens incurred in connection with Permitted Indebtedness under clauses (b) thereunder, provided that such Liens are not secured by assets of the Corporation or its subsidiaries other than the assets so acquired or leased.

“Person” means a corporation, an association, a partnership, an organization, a business, an individual, a government or political subdivision thereof or a governmental agency.

“Preferred Stock” shall have the meaning given such term in Section 2.

“Purchase Agreements” means the Series B-1 and B-2 Purchase Agreement and the Series B-3 Purchase Agreement.

“Registration Rights Agreements” means the Registration Rights Agreement, dated as of February 12, 2009, and the Registration Rights Agreement, dated as of the date of the Series B-3 Purchase Agreement, to which the Corporation and the applicable original Holder are parties, in each case, as amended, modified or supplemented from time to time in accordance with their terms.

“Registration Statement” means a registration statement that meets the requirements of the Registration Rights Agreements and registers the resale of Conversion Shares and Dividend Shares by the Holder, who shall be named as a “selling stockholder” thereunder, all as provided in the Registration Rights Agreements.

“Registration Statement Condition” means that a Registration Statement is effective, and not subject to any stop order or suspension, and all related blue sky filings have been made.

“Rights Offering” means a registered offering of up to \$20,000,000 of Common Stock by the Company to its Common Stockholders.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Series A Preferred Stock” means the Corporation’s Series A 12% Convertible Preferred Stock, par value \$0.01 per share.

“Series B Directors” shall have the meaning given such term in Section 4.

“Series B-1 and B-2 Purchase Agreement” means the Securities Purchase Agreement, dated as of February 12, 2009, to which the Corporation and the original Holders are parties, as amended, modified or supplemented from time to time in accordance with its terms with respect to the Series B-1 and B-2 Preferred Stock.

“Series B-3 Purchase Agreement” means the Securities Purchase Agreements to which the Corporation and the original Holders are parties, as amended, modified or supplemented from time to time in accordance with their terms with respect to the Series B-3 Preferred Stock.

“Share Delivery Date” shall have the meaning given such term in Section 5(c)(i).

“Stated Value” shall have the meaning given such term in Section 2.

“Subsidiary” means any entity in which the Corporation, directly or indirectly, beneficially owns 20% or more the voting securities thereof, including any entity formed or acquired after the date hereof.

“Trading Day” means a day on which the Common Stock is traded on a Trading Market.

“Trading Market” means any one of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the Nasdaq SmallCap Market, the American Stock Exchange, the New York Stock Exchange, the Nasdaq National Market, the OTC Bulletin Board, or “Pink Sheets.”

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg Financial L.P. (based on a Trading Day from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time); (b) if the Common Stock is then listed or quoted on the OTC Bulletin Board, the average of the high and low price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board; or (c) if prices for the Common Stock are then reported in the “Pink Sheets” published by the Pink Sheets, LLC (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported. As used in clause (a) of this definition, the term “Trading Market” excludes the OTC Bulletin Board and the Pink Sheets.

Section 2. Designation, Amount and Par Value. Three or more series of preferred stock shall be designated as the Corporation’s (a) Series B-1 Convertible Preferred Stock (the “Series B-1 Preferred”), of which the number of shares so designated shall be 900,000, (b) Series B-2 Convertible Preferred Stock (the “Series B-2 Preferred”), of which the number of shares so designated shall be 2,100,000 and (c) Series B-3 Convertible Preferred Stock (the “Series B-3 Preferred,” and collectively with the Series B-1 Preferred and the Series B-2 Preferred, the “Preferred Stock”), of which the number of shares so designated shall be 6,000,000, for a total of 9,000,000 shares of Preferred Stock. The Series B-3 may be issued in one or more sub-series. Each share of Preferred Stock shall have a par value of \$0.01 per share and (a) each share of Series B-1 Preferred and Series B-2 Preferred shall have a stated value equal to \$2.00 and (b) each share of each sub-series of Series B-3 Preferred Stock shall have a stated value equal to \$1.00 (the “Stated Value”). Capitalized terms not otherwise defined herein shall have the meaning given such terms in Section 1 hereof.

Section 3. Dividends. Holders shall be entitled to receive, and the Corporation shall pay, cumulative dividends at the rate per share (as a percentage of the Stated Value per share) of (a) in the case of Series B-1 Preferred and Series B-2 Preferred, 12% per annum (compounding monthly) and (b) in the case of Series B-3 Preferred, 8% per annum, in each case, payable in arrears quarterly on March 31, June 30, September 30 and December 31, beginning with (a) in the case of Series B-1 Preferred and Series B-2 Preferred, June 30, 2009 and in the case of Series B-3 Preferred, December 31, 2016 (except that, if such date is not a Trading Day, the payment date shall be the next succeeding Trading Day) (“Dividend Payment Date”). The dividends shall be payable at the Corporation’s option either in cash or, if the Registration Statement Condition is true as of the Dividend Payment Date and the issuance of shares of Common Stock for dividends would not trigger any anti-dilution provisions to which the Corporation is subject, in duly authorized, fully paid and non-assessable shares of Common Stock valued at 100% of the average of the VWAPs for the twenty (20) consecutive Trading Days ending on the Trading Day that is immediately prior to the Dividend Payment Date. Dividends on the Preferred Stock shall be calculated on the basis of a 360-day year, shall accrue daily commencing on the applicable Original Issue Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. The Corporation covenants that all shares of Common Stock that are issued in satisfaction of dividends due on the Preferred Stock shall, upon issue, be duly and validly authorized, issued and fully paid, nonassessable and registered for public sale in accordance with the Registration Statement. Except as otherwise provided herein, if at any time the Corporation pays dividends partially in cash and partially in shares, then such payment shall be distributed ratably among the Holders based upon the number of shares of Preferred Stock held by each Holder. If the Corporation does not pay any dividend on the Preferred Stock, either in cash or in shares of Common Stock, on or prior to the Dividend Payment Date on which the dividend is due, then from that Dividend Payment Date until such time as all accrued but unpaid dividends due on the Preferred Stock have been paid in full, dividends shall accrue on the Preferred Stock at the rate of 15% per annum (compounding monthly).

Section 4. Voting Rights. Except as set forth specifically below, the holder of each share of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of

Preferred Stock would be convertible under the circumstances described in Section 5 hereof on the record date for the vote or consent of shareholders, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. The foregoing notwithstanding, with respect to the election of directors, until there are no longer any shares of Preferred Stock outstanding, (i) the holders of the Preferred Stock shall vote together as a separate class to elect two (2) members of the Board of Directors (the “Series B Directors”), and (ii) the Corporation shall take all reasonably necessary or desirable actions within its control (including, without limitation, calling special meetings of the Board of Directors, nominating such persons designated by the holders of the Preferred Stock as directors on the applicable proxy statements and recommending their election) to permit the holders of the Preferred Stock to appoint three (3) additional members of the Board of Directors (the “Series B Nominees”), who shall be subject to election by all shares of voting stock of the Corporation voting together as a single group. The holders of Preferred Stock shall vote together with the holders of Common Stock and other voting capital stock of the Corporation to elect all other members of the Board of Directors. In the event the holders of Preferred Stock do not exercise their right to elect Series B Directors, such holders will be permitted to send a non-voting representative in an observer capacity to all meetings of the Board of Directors of the Corporation, with respect to which reasonable notice shall be provided to such holders, including notice of all written consents taken in lieu of a meeting of the Board of Directors of the Corporation prior to execution of any such consents. Each holder of a share of the Preferred Stock shall be entitled to receive the same prior notice of any shareholders’ meeting as provided to the holders of Common Stock in accordance with the Bylaws of the Corporation, as well as prior notice of all shareholder actions to be taken by legally available means in lieu of meeting, and shall vote with holders of the Common Stock upon any matter submitted to a vote of shareholders, except those matters required by law, or by the terms hereof, to be submitted to a class vote of the holders of Preferred Stock.

#### Section 5. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible into that number of shares of Common Stock determined by dividing the Conversion Amount of such share of Preferred Stock by the applicable Conversion Price, at the option of the Holder, at any time and from time to time from and after the Original Issue Date. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a “Notice of Conversion”). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the Holder delivers such Notice of Conversion to the Corporation by facsimile (the “Conversion Date”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall surrender the certificate(s) representing such shares of Preferred Stock to the Corporation promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and may not be reissued. If the number of shares of Preferred Stock represented by the Preferred Stock certificate(s) submitted for conversion is greater than the number of shares of Preferred Stock being converted, then the Corporation shall, as soon as practicable and at the Corporation’s expense, issue and deliver to the holder a new Preferred Stock certificate representing the number of shares of Preferred Stock not converted.

b) Conversion Price. The conversion price for (i) the Series B-1 Preferred and the Series B-2 Preferred shall equal \$3.00 and (ii) for the Series B-3 Preferred shall equal the conversion price as set forth in the Series B-3 Purchase Agreement, or amendment thereof, relating to the initial issuance each share of Series B-3 Preferred (the “Conversion Price”), in each case, subject to adjustment as set forth in Section 6(a).

c) Mechanics of Conversion.

i. Delivery of Certificate Upon Conversion. Not later than five (5) Trading Days after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver or cause to be delivered to the Holder (A) a certificate or certificates which, after the Effective Date, shall be free of restrictive legends and trading restrictions (other than those required by the Purchase Agreements) representing the number of shares of Common Stock being acquired upon the conversion of shares of Preferred Stock, and (B) a bank check in the amount of accrued and unpaid dividends (if the Corporation has elected or is required to pay accrued dividends in cash). After the Effective Date, the Corporation shall, upon request of the Holder, deliver any certificate or certificates required to be delivered by

the Corporation under this Section electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by the applicable Holder by the fifth Trading Day after the Conversion Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such certificate or certificates thereafter, to rescind such conversion, in which event the Corporation shall immediately return the certificates representing the shares of Preferred Stock tendered for conversion.

ii. Obligation Absolute; Partial Liquidated Damages. The Corporation's obligations to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by the Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to the Holder in connection with the issuance of such Conversion Shares. In the event a Holder shall elect to convert any or all of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice, restraining and or enjoining conversion of all or part of this Preferred Stock shall have been sought and obtained. In the absence of an injunction precluding the same, the Corporation shall issue Conversion Shares upon a properly noticed conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver certificates representing shares of Common Stock upon conversion within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

iii. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock solely for the purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of persons other than the Holder (and the other Holders of the Preferred Stock), not less than such number of shares of the Common Stock as shall (subject to any additional requirements of the Corporation as to reservation of such shares set forth in the Purchase Agreements) be issuable (taking into account the adjustments and restrictions of Section 6) upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly and validly authorized, issued and fully paid, nonassessable and, if the Registration Statement is then effective under the Securities Act, registered for public sale in accordance with such Registration Statement.

iv. Fractional Shares. Upon a conversion hereunder, the Corporation shall not be required to issue stock certificates representing fractions of shares of the Common Stock, but may, if otherwise permitted, make a cash payment in respect of any final fraction of a share based on the VWAP as of the Conversion Date. If the Corporation elects not, or is unable, to make such a cash payment, the Holder shall be entitled to receive, in lieu of the final fraction of a share, one whole share of Common Stock.

v. Transfer Taxes. The issuance of certificates for shares of the Common Stock on conversion of Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificate, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

d) Automatic Conversion Upon Transfer. In the event the original Holder of the Preferred Stock transfers any shares of Preferred Stock to a third party for any reason, the shares of Preferred Stock presented for transfer will automatically be converted into shares of Common Stock on the terms set forth in Sections 5(a), (b) and (c) herein. A request made to the Corporation to transfer shares of Preferred Stock to a third party shall be deemed a Notice of Conversion with respect to those shares, and the Conversion Date shall be deemed the date the request for transfer is received by the Corporation.

## Section 6. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation after the date of the recordation of this Certificate of Designation and thereafter at any time while this Preferred Stock is outstanding: (A) pays a stock dividend or otherwise make a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation pursuant to this Preferred Stock, the Corporation's Series A 12% Convertible Preferred Stock or the Corporation's Series C Super Dividend Convertible Preferred Stock), (B) subdivides outstanding shares of Common Stock into a larger number of shares, (C) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (D) issues by reclassification of shares of the Common Stock any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 6(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Calculations. All calculations under this Section 6 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 6, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

c) Notice to Holders. Whenever the Conversion Price is adjusted pursuant to any of this Section 6, the Corporation shall promptly mail to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

Section 7. Redemption. (a) The Corporation may, any time on thirty (30) days prior written notice to the Holder, (i) redeem all shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock which are outstanding for the Redemption Price, provided that the total number of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock which are outstanding is less than 10% of the total number of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock originally issued, and (ii) redeem all shares of Series B-3 Preferred Stock which are outstanding for the Redemption Price, provided that the total number of shares of Series B-3 Preferred Stock which are outstanding is less than 10% of the total number of shares of Series B-3 Preferred Stock originally issued, by October 15, 2016. Any such redemption by the Corporation shall be effective on the thirtieth (30<sup>th</sup>) day after notice of redemption is sent by the Corporation to the Holder (a "*Redemption Date*"), and the Holder shall receive payment of the Redemption Price upon surrender of all shares of Preferred Stock called for redemption. After the Redemption Date, all shares of Preferred Stock shall no longer be considered issued and outstanding, and shall have no right to vote on any matter upon which shares would be entitled to vote if still issued and outstanding. Nothing shall prohibit the Holder from exercising any right to convert the Preferred Stock into Common Stock between the date notice of redemption is sent by the Corporation and the Redemption Date.

(c) On or before the date of a scheduled Redemption Date and in connection therewith, each holder of shares of Preferred Stock shall surrender the certificate representing such shares to the Corporation and shall receive payment of the Redemption Price in cash on the Redemption Date. Unless otherwise provided herein, upon the surrender of any shares for redemption under this Section 7(c), the shares so redeemed shall no longer be issued and outstanding, and upon such payment shall have no right to vote on any matter upon which shares would be entitled to vote if still issued and outstanding. If less than all the shares represented by a surrendered certificate are redeemed, the Corporation shall issue a new certificate representing the unredeemed shares.

## Section 8. Liquidation Rights.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, but *pari passu* with the holders of the Corporation's Series A Preferred Stock, an amount per share equal to Conversion Amount of the Preferred Stock as of the record date for distribution, provided that the record date for the distribution may be no

more than twenty (20) calendar days prior to the date of the distribution. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Preferred Stock and the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts and the *pari passu* amounts due in respect of the Series A Preferred Stock, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Preferred Stock and the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Upon the completion of the distribution required by subparagraph (a) of this Section 8 and any other distribution that may be required with respect to any other series of preferred stock that may from time to time come into existence, the remaining assets of the Corporation available for distribution to shareholders shall be distributed among the holders of Common Stock.

(c) (i) For purposes of this Section 8, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, any of the following (a "Sale, Merger, or Reorganization"): (x) the merger or consolidation of the Corporation into or with another corporation or entity, reorganization or sale of the Corporation, or sale of capital stock by the Corporation, in which the shareholders of the Corporation immediately preceding such merger, consolidation, or reorganization (solely by virtue of their shares or other securities of the Corporation) shall own less than fifty percent (50%) of the voting securities of the surviving corporation; (y) the sale, transfer or lease (but not including a permitted transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions or plan, of 50% or more of the assets of the Corporation, based on the fair market value of the Corporation's assets as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of the Preferred Stock, which assets shall include for these purposes fifty percent (50%) or more of the outstanding voting capital stock of any subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole; or (z) the sale, transfer or lease (but not including a permitted transfer or lease by pledge or mortgage to a *bona fide* lender), whether in a single transaction or pursuant to a series of related transactions, of all or substantially all of the assets of the subsidiaries of the Corporation, the assets of which constitute all or substantially all of the assets of the Corporation and such subsidiaries taken as a whole.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of the Preferred Stock.

#### Section 9. Protective Provisions.

(a) Actions Requiring Majority Approval of Preferred Stock. In addition to any other rights provided by law, so long as any shares of Preferred Stock are then outstanding, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Articles of Incorporation, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the total number of shares of the Preferred Stock outstanding, voting as a separate class, the Corporation shall not:

(i) change the size of the Corporation's Board of Directors from nine (9) members;

(ii) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws or file any articles of amendment designating the preferences, limitations and relative rights of any series of preferred stock, or engage in any other action, that would alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock;

(iii) create or increase, or authorize the creation or increase of the authorized amount of any additional class or series of shares of stock, unless the same ranks junior to the Preferred Stock as to dividends, redemption and the distribution of assets on the liquidation, dissolution or winding up of the Corporation; or create or authorize any obligation or security convertible into shares of Common Stock, Preferred Stock or any other class or series of stock, whether voting or non-voting, unless an adequate number of shares have been reserved for the issuance of such shares of Common Stock, Preferred Stock or other class or series of stock upon such conversion; regardless of whether any such creation, authorization or increase shall be by means of amendment to the Articles of Incorporation, or by merger, consolidation or otherwise;

(iv) increase or decrease the authorized number of shares of the Preferred Stock;

(v) purchase, redeem or otherwise acquire for value any shares of any class of its capital stock or cause or permit any employee stock ownership plan, including any Employee Stock Ownership Plan as defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, to purchase shares of any class of its capital stock unless the outstanding shares of Preferred Stock, and any other shares of capital stock held by the holders of the Preferred Stock, shall have first been purchased, redeemed or otherwise acquired for value;

(vi) merge or consolidate into or with any other corporation or sell, assign, lease, pledge, encumber or otherwise dispose of all or substantially all of its assets or those of any subsidiary;

(vii) voluntarily or involuntarily liquidate, dissolve or wind up the Corporation or its business;

(viii) pay or declare dividends on any capital stock other than the Preferred Stock, unless the Preferred Stock share ratably in such dividend and all accrued dividends payable with respect to the Preferred Stock have been paid prior to the payment or declaration of such dividend;

(ix) acquire an equitable interest in, or the assets or business of any other entity in any form of transaction;

(x) create or commit the Corporation to enter into a joint venture, licensing agreement or exclusive marketing or other distribution agreement with respect to the Corporation's products, other than in the ordinary course of business;

(xi) permit the Corporation or any subsidiary of the Corporation to sell or issue any security of such subsidiary to any person or entity other than the Corporation;

(xii) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(xiii) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(xiv) other than in connection with an Exempt Issuance or the Rights Offering, issue any Common Stock or Common Stock Equivalents;

(xv) increase the number of shares of Common Stock that may be issued pursuant to options, warrants or rights to employees, directors, officers, consultants or advisors above the amount that is authorized for issuance under the Company's 2001 Stock Incentive Plan, 2003 Non-Employee Director Stock Incentive Plan, and 2009 Incentive Compensation Plan as of September 9, 2016 (which number shall be appropriately adjusted for any stock splits, stock dividends, recapitalizations or similar events);

(xvi) amend the provisions of this Subsection 9(a).

(b) Notwithstanding anything to the contrary contained herein, nothing shall be deemed to limit the Company's ability to consummate the Rights Offering or require the consent of Series B Stockholders or Series B Directors prior to such consummation (other than as may be required by law); provided that nothing herein shall prohibit the Series B Directors from voting on the Rights Offering and its terms as a group with all other directors.

The Corporation agrees that its breach of this Section 9 will result in irreparable harm to the Holders, and therefore the Holder shall be entitled to obtain injunctive relief against the Corporation to preclude any such transaction that would be in violation of this Section, for which the Corporation expressly waives any requirement that the Holder post bond, which remedy shall be in addition to all remedies available to it at law or in equity.

#### Section 10. Events of Noncompliance.

(a) An "Event of Noncompliance" shall have occurred if:

(i) the Corporation breaches or otherwise fails to perform in any material respect any of the covenants or any of its obligations to the holders of the Preferred Stock and fails to cure such breach or failure after any holder of Preferred Stock provides written notice of such breach or failure and the Corporation had had a reasonable opportunity (but not in any event more than 30 days) to cure such failure or breach; or

(ii) the Corporation or any subsidiary makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the



Corporation or any subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any subsidiary or of any substantial part of the assets of the Corporation or any subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a subsidiary) relating to the Corporation or any subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any subsidiary and either (a) the Corporation or any such subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (b) such petition, application or proceeding is not dismissed within 60 days.

(b) If an Event of Noncompliance has occurred, and in the event the Series B Directors and Series B Nominees constitute less than a majority of the Corporation's Board of Directors, the number of directors constituting the Corporation's Board of Directors shall, at the request of the holders of a majority of the Preferred Stock then outstanding, be increased by such number which shall, together with the existing Series B Directors and Series B Nominees elected or nominated by the holders of the Preferred Stock, if any, constitute a minimum majority of the Board of Directors, and the holders of Preferred Stock shall have the special right, voting together as a single class (with each share being entitled to one vote) and to the exclusion of all other classes of the Corporation's capital stock, to elect individuals to fill such newly created directorships, to remove any individuals elected to such directorships and to fill any vacancies in such directorships; provided, however, that the special right of the holders of Preferred Stock to elect a majority of the members of the Board of Directors shall exist only after such Event of Noncompliance has continued and remained in effect for 30 days after notice to the Corporation by any holder of Preferred Stock. Such special right may be exercised at the special meeting called pursuant to this subparagraph (b), at any annual or other special meeting of shareholders and, to the extent and in the manner permitted by applicable law, pursuant to a written consent in lieu of a shareholders meeting. Such special right shall continue until such time as there is no longer any Event of Noncompliance in existence, at which time such special right shall terminate subject to revesting upon the occurrence and continuation of any Event of Noncompliance which gives rise to such special right hereunder.

At any time when such special right has vested in the holders of Preferred Stock, a proper officer of the Corporation shall, upon the written request of the holder(s) of at least 10% of the Preferred Stock then outstanding, addressed to the secretary of the Corporation, call a special meeting of the holders of Preferred Stock for the purpose of electing directors pursuant to this subparagraph. Such meeting shall be held at the earliest legally permissible date at the principal office of the Corporation, or at such other place designated by the holders of at least 10% of the Preferred Stock then outstanding who first requested the meeting. If such meeting has not been called by a proper officer of the Corporation within 10 days after personal service of such written request upon the secretary of the Corporation or within 20 days after mailing the same to the secretary of the Corporation at its principal office, then the holders of at least 10% of the Preferred Stock then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such person or entity so designated upon the notice required for annual meetings of shareholders and shall be held at the Corporation's principal office, or at such other place designated by such person. Any holder of Preferred Stock so designated shall be given access to the stock record books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to this subparagraph.

At any meeting or at any adjournment thereof at which the holders of Preferred Stock have the special right to elect directors, the presence, in person or by proxy, of the holders of a majority of the Preferred Stock then outstanding shall be required to constitute a quorum for the election or removal of any director by the holders of the Preferred Stock exercising such special right. The vote of a majority of such quorum shall be required to elect or remove any such director. Any director so elected by the holders of Preferred Stock shall continue to serve as a director until the expiration of the lesser of (a) a period of six months following the date on which there is no longer any Event of Noncompliance in existence or (b) the remaining period of the full term for which such director has been elected. After the expiration of such six-month period or when the full term for which such director has been elected ceases (provided that the special right to elect directors has terminated), as the case may be, the number of directors constituting the Board of Directors of the Corporation shall decrease to such number as constituted the whole Board of Directors of the Corporation immediately prior to the occurrence of the Event or Events of Noncompliance giving rise to the special right to elect directors.

If any Event of Noncompliance exists, each holder of Preferred Stock shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

Section 11. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, by e-mail or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above, facsimile number (617) 928-3450, Attn: Peter G. Traber, MD, e-mail address (traber@galectintherapeutics.com) or such other address, facsimile number or electronic mail address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, by e-mail, sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile telephone number, e-mail address or address of such Holder appearing on the books of the Corporation, or if no such facsimile telephone number, e-mail address or address appears, at the principal place of business of the Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission (accompanied by confirmation of such transmission), if such notice or communication is delivered via facsimile or e-mail at the facsimile telephone number or e-mail address, as applicable, specified in this Section prior to 5:30 p.m. (New York City time), (ii) the date after the date of transmission (accompanied by confirmation of such transmission), if such notice or communication is delivered via facsimile or e-mail at the facsimile telephone number or e-mail address, as applicable, specified in this Section later than 5:30 p.m. (New York City time) on any date and earlier than 11:59 p.m. (New York City time) on such date, (iii) the first Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof, and indemnity, if requested, all reasonably satisfactory to the Corporation.

c) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Nevada, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in Delaware. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Delaware courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or such Delaware courts are an improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

- d) Waiver. Any waiver by the Corporation or the Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation. The failure of the Corporation or the Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver must be in writing.
- e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates applicable laws governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum permitted rate of interest.
- f) Next Trading Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Trading Day, such payment shall be made on the next succeeding Trading Day.
- g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.
- h) Status of Converted Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Purchase Agreements. In case any shares of Preferred Stock shall be converted or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock or Series B-3 Convertible Preferred Stock.

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IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Certificate of Designation this 22nd day of September, 2016.

/S/ Peter G. Traber, MD.

Name: Peter G. Traber, MD.

Title: Chief Executive Officer and President

NEITHER THIS WARRANT CERTIFICATE NOR THE WARRANTS REPRESENTED HEREBY NOR ANY SHARES OF COMMON STOCK ISSUABLE UPON THE EXERCISE OF SUCH WARRANTS, NOR ANY INTEREST IN OR RIGHTS UNDER SAME, HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE LAWS OF ANY STATE, AND NEITHER THIS WARRANT CERTIFICATE NOR THE WARRANTS REPRESENTED HEREBY NOR ANY SHARES OF COMMON STOCK ISSUABLE UPON THE EXERCISE OF SUCH WARRANTS, NOR ANY INTEREST IN OR RIGHTS UNDER SAME, MAY BE SOLD OR OTHERWISE TRANSFERRED UNLESS REGISTERED UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

W-2016-B-3-\_\_

GALECTIN THERAPEUTICS, INC.  
COMMON STOCK PURCHASE WARRANT – CLASS B-3

Galectin Therapeutics, Inc., a Nevada corporation (the “Company”), for value received and subject to the terms set forth below hereby grants to 10X Fund, L.P., a Delaware limited partnership, or its registered successors and assigns (the “Holder”), the right to purchase from the Company at any time or from time to time until the date and time permitted under Section 2.1 below, \_\_\_\_\_ fully paid and nonassessable shares of the Common Stock, par value \$0.001 per share, at the purchase price of \_\_\_\_ cents (\$\_\_\_\_) per share (the “Exercise Price”). The Exercise Price and the number and character of such shares of Common Stock purchasable pursuant to the rights granted under this Warrant are subject to adjustment as provided herein.

1. Definitions. As used herein the following terms, unless the context otherwise requires, have the following respective meanings:

“*Common Stock*” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter have been reclassified or changed into, including any stock (other than Common Stock) and other securities of the Company or any other Person (corporate or other) which the Holder of this Warrant at any time shall be entitled to receive, or shall have received, upon the exercise of this Warrant, in lieu of or in addition to Common Stock, or which at any time shall be issuable or shall have been issued in exchange for or in replacement of Common Stock pursuant to Section 3.2 hereof or otherwise.

“*Issue Date*” means \_\_\_\_\_, 2016.

“*Market Value*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (other than the OTC Bulletin Board), the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg Financial L.P. (based on a Trading Day from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time); (b) if the Common Stock is then listed or quoted on the OTC Bulletin Board, the average of the high and low price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board; or (c) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then reported in the “Pink Sheets” published by the Pink Sheets, LLC (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported.

“*Registration Rights Agreement*” means the Registration Rights Agreement, dated as of the Issue Date, to which the Corporation and the original Holder are parties, as amended, modified or supplemented from time to time in accordance with its terms.

“*This Warrant*” means, collectively, this Warrant and all other stock purchase warrants issued in exchange therefor or replacement thereof.

“*Trading Day*” means a day on which the common Stock is traded on a Trading Market.

“*Trading Market*” means any of the following markets or exchanges on which the common Stock is listed or quoted for trading on the date in question: the Nasdaq SmallCap Market, the NYSE Alternext US, the New York Stock Exchange, the Nasdaq National Market, the OTC Bulletin Board or the “Pink Sheets”.

## 2. Exercise.

2.1 Exercise Period. The Holder may exercise this Warrant at any time six months after the Issue Date and before the close of business in Norcross, Georgia on the seventh (7<sup>th</sup>) anniversary of the Issue Date (the “Exercise Period”), unless earlier terminated pursuant to Section 2.6 herein.

### 2.2 Exercise Procedure.

(a) This Warrant will be deemed to have been exercised at such time as the Company has received all of the following items (the “Exercise Date”):

(i) a completed Subscription Agreement as described in Section 2.4 hereof, executed by the Person exercising all or part of the purchase rights represented by this Warrant (the “Purchaser”);

(ii) this Warrant;

(iii) if this Warrant is not registered in the name of the Purchaser, an Assignment or Assignments in the form set forth in Exhibit B hereto, evidencing the assignment of this Warrant to the Purchaser together with any documentation required pursuant to Section 8(a) hereof; and

(iv) a check payable to the order of the Company in an amount equal to the product of the Exercise Price multiplied by the number of shares of Common Stock being purchased upon such exercise.

(b) As soon as practicable after the exercise of this Warrant in full or in part, and in any event within ten (10) days after the Exercise Date, the Company at its expense will cause to be issued in the name of and delivered to the Purchaser, or as the Purchaser (upon payment by the Purchaser of any applicable transfer taxes) may direct, a certificate or certificates for the number of fully paid and non-assessable shares of Common Stock to which the Purchaser shall be entitled upon such exercise, together with any other stock or other securities and property (including cash, where applicable) to which the Purchaser is entitled upon exercise.

(c) Unless this Warrant has expired or all of the purchase rights represented hereby have been exercised, the Company at its expense will, within ten (10) days after the Exercise Date, issue and deliver to or upon the order of the Purchaser a new Warrant or Warrants of like tenor, in the name of the Purchaser or as the Purchaser (upon payment by the Purchaser of any applicable transfer taxes) may request, calling in the aggregate on the face or faces thereof for the number of shares of Common Stock remaining issuable under this Warrant.

(d) The Common Stock issuable upon the exercise of this Warrant will be deemed to have been issued to the Purchaser on the Exercise Date, and the Purchaser will be deemed for all purposes to have become the record holder of such Common Stock on the Exercise Date.

(e) The issuance of certificates for shares of Common Stock upon exercise of this Warrant will be made without charge to the Holder or the Purchaser for any issuance tax in respect thereof or any other cost incurred by the Company in connection with such exercise and the related issuance of shares of Common Stock.

(f) The holder represents and warrants that at the time of any exercise of this warrant the holder is an “accredited investor,” as such term is defined in Rule 501 promulgated under the Securities Act and acknowledges and agrees that the Company may, in its sole discretion, (i) require, as a condition to the exercise of this Warrant, that the holder provide such written evidence that such holder is an accredited investor as the time of exercise, and (ii) decline to issue the shares of Common Stock issuable upon such exercise if the Company is not satisfied that this warrant may be exercised by the holder pursuant to a valid registration exemption from the Securities Act and any applicable state securities law.

2.3 Acknowledgement of Continuing Obligations. The Company will, at the time of the exercise of this Warrant, upon the request of the Purchaser, acknowledge in writing its continuing obligation to afford to the Purchaser any rights to which the Purchaser shall continue to be entitled after such exercise in accordance with the provisions of this Warrant, provided that if the Purchaser shall fail to make any such request, such failure shall not affect the continuing obligation of the Company to afford to the Purchaser any such rights.

2.4 Subscription Agreement. The Subscription Agreement will be substantially in the form set forth in Exhibit A hereto, except that if the shares of Common Stock issuable upon exercise of this Warrant are not to be issued in the name of the Purchaser, the Subscription Agreement will also state the name of the Person to whom the certificates for the shares of Common Stock are to be issued, and if the number of shares of Common Stock to be issued does not include all the shares of Common Stock issuable hereunder, it will also state the name of the Person to whom a new Warrant for the unexercised portion of the rights hereunder is to be delivered.

2.5 Fractional Shares. If a fractional share of Common Stock would, but for the provisions of Section 2.1 hereof, be issuable upon exercise of the rights represented by this Warrant, the Company will, within ten (10) days after the Exercise Date, deliver to the Purchaser a check payable to the Purchaser in lieu of such fractional share, in an amount equal to the Market Value of such fractional share as of the close of business on the Exercise Date.

### 3. Adjustments.

3.1 Adjustments for Stock Splits, Etc. If the Company shall at any time after the Issue Date subdivide its outstanding Common Stock, by split-up or otherwise, or combine its outstanding Common Stock, or issue additional shares of its capital stock in payment of a stock dividend in respect of its Common Stock, the number of shares issuable on the exercise of the unexercised portion of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination, and the Exercise Price then applicable to shares covered by the unexercised portion of this Warrant shall forthwith be proportionately decreased in the case of a subdivision or stock dividend, or proportionately increased in the case of combination.

3.2 Adjustment for Reclassification, Reorganization, Etc. In case of any reclassification, capital reorganization, or change of the outstanding Common Stock (other than as a result of a subdivision, combination or stock dividend), or in the case of any consolidation of the Company with, or merger of the Company into, another Person (other than a consolidation or merger in which the Company is the continuing corporation and which does not result in any reclassification or change of the outstanding Common Stock of the Company), or in case of any sale or conveyance to one or more Persons of the property of the Company as an entirety or substantially as an entirety at any time prior to the expiration of this Warrant, then, as a condition of such reclassification, reorganization, change, consolidation, merger, sale or conveyance, lawful provision shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Holder of this Warrant, so that the Holder of this Warrant shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, the kind and amount of shares of stock and other securities and property receivable upon such reclassification, reorganization, change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock of the Company as to which this Warrant was exercisable immediately prior to such reclassification, reorganization, change, consolidation, merger, sale or conveyance, and in any such case appropriate provision shall be made with respect to the rights and interests of the Holder of this Warrant to the end that the provisions hereof (including, without limitation, provisions for the adjustment of the Exercise Price and of the number of shares purchasable upon exercise of this Warrant) shall thereafter be applicable in relation to any shares of stock, and other securities and property, thereafter deliverable upon exercise hereof. If, as a consequence of any such transaction, solely cash, and no securities or other property of any kind, is deliverable upon exercise of this Warrant, then, in such event, the Company may terminate this Warrant by giving the Holder hereof written notice thereof. Such notice shall specify the date (at least thirty (30) days subsequent to the date on which notice is given) on which, at 3:00 P.M., Norcross, Georgia time, this Warrant shall terminate. Notwithstanding any such notice, this Warrant shall remain exercisable, and otherwise in full force and effect, until such time of termination.

3.3 Certificate of Adjustment. Whenever the Exercise Price or the number of shares issuable hereunder is adjusted, as herein provided, the Company shall promptly deliver to the registered Holder of this Warrant a certificate of the Treasurer of the Company, which certificate shall state (i) the Exercise Price and the number of shares of Common Stock issuable hereunder after such adjustment, (ii) the facts requiring such adjustment, and (iii) the method of calculation for such adjustment and increase or decrease.

3.4 Small Adjustments. No adjustment in the Exercise Price shall be required unless such adjustment would require an increase or decrease in the Exercise Price of at least one percent; provided, however, that any adjustments which by reason of this Section 3.5 are not required to be made immediately shall be carried forward and taken into account at the time of exercise of this Warrant or any subsequent adjustment in the Exercise Price which, singly or in combination with any adjustment carried forward, is required to be made under Sections 3.1 or 3.2.

4. Reservation of Stock, etc., Issuable on Exercise of Warrant. The Company will at all times reserve and keep available, solely for issuance and delivery upon the exercise of this Warrant, all shares of Common Stock from time to time issuable upon the exercise of this Warrant.

5. Disposition of This Warrant, Common Stock, Etc.

(a) The Holder of this Warrant and any transferee hereof or of the Common Stock with respect to which this Warrant may be exercisable, by their acceptance hereof, hereby understand and agree that this Warrant and the Common Stock with respect to which this Warrant may be exercisable have not been registered under the Securities Act, and may not be sold, pledged, hypothecated, donated, or otherwise



transferred (whether or not for consideration) without an effective registration statement under the Act or an opinion of counsel satisfactory to the Company and/or submission to the Company of such other evidence as may be satisfactory to counsel to the Company, in each such case, to the effect that any such transfer shall not be in violation of the Act. It shall be a condition to the transfer of this Warrant that any transferee thereof deliver to the Company its written agreement to accept and be bound by all of the terms and conditions of this Warrant. The foregoing notwithstanding, the Company acknowledges its obligations as set forth in the Registration Rights Agreement to register the shares of Common Stock issuable upon exercise hereof.

(b) Except to the extent the resale of the shares of Common Stock issuable upon exercise hereof are registered for resale, or may be sold to the public pursuant to Rule 144(b)(1) under the Securities Act, the certificates of the Company that will evidence the shares of Common Stock with respect to which this Warrant may be exercisable will be imprinted with a conspicuous legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND MAY NOT BE SOLD, PLEDGED, HYPOTHECATED, DONATED OR OTHERWISE TRANSFERRED (WHETHER OR NOT FOR CONSIDERATION) BY THE HOLDER WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND/OR SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL TO THE COMPANY, IN EACH SUCH CASE, TO THE EFFECT THAT ANY SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT.”

Except as set forth in the Registration Rights Agreement, the Company has not agreed to register any of the Holder’s shares of Common Stock of the Company with respect to which this Warrant may be exercisable for distribution in accordance with the provisions of the Securities Act, and the Company has not agreed to comply with any exemption from registration under the Act for the resale of the Holder’s shares of Common Stock with respect to which this Warrant may be exercised. Hence, it is the understanding of the Holder of this Warrant that by virtue of the provisions of certain rules respecting “restricted securities” promulgated by the SEC, the shares of Common Stock of the Company with respect to which this Warrant may be exercisable may be required to be held indefinitely, unless and until registered under the Securities Act (as contemplated by the Registration Rights Agreement), unless an exemption from such registration is available, in which case the Holder may still be limited as to the number of shares of Common Stock of the Company with respect to which this Warrant may be exercised that may be sold from time to time.

6. Rights and Obligations of Warrant Holder. The Holder of this Warrant shall not, by virtue hereof, be entitled to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative actions by the Holder to purchase Common Stock of the Company by exercising this Warrant, and no enumeration in this Warrant of the rights or privileges of the Holder, will give rise to any liability of such Holder for the Exercise Price of Common Stock acquirable by exercise hereof or as a stockholder of the Company.

7. Transfer of Warrants. Subject to compliance with the restrictions on transfer applicable to this Warrant referred to in Section 5 hereof, this Warrant and all rights hereunder are transferable, in whole or in part, without charge to the registered Holder, upon surrender of this Warrant with a properly executed Assignment (in substantially the form attached hereto as Exhibit B), to the Company, and the Company at its expense will issue and deliver to or upon the order of the Holder hereof a new Warrant or Warrants in such denomination or denominations as may be requested, but otherwise of like tenor, in the name of the Holder or as the Holder (upon payment of any applicable transfer taxes) may direct.

8. Replacement of Warrants. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any Warrant and, in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, upon surrender and cancellation of such Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

9. Company Records. Until this Warrant is transferred on the books of the Company, the Company may treat the registered Holder hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary.

10. Miscellaneous.

10.1 Notices. All notices and other communications from the Company to the Holder of this Warrant shall be mailed by first class mail, postage prepaid, to such address as may have been furnished to the Company in writing by such Holder, or, until an address is so furnished, to and at the address of the last Holder of this Warrant who has so furnished an address to the Company. All communications from the Holder of this Warrant to the Company shall be mailed by first class mail, postage prepaid, to Galectin Therapeutics, Inc., 4960 Peachtree Industrial Boulevard, Suite 240, Norcross, GA 30071, Attn:

Chief Financial Officer, or such other address as may have been furnished to the Holder in writing by the Company.

10.2 Amendment and Waiver. Except as otherwise provided herein, this Warrant and any term hereof may be amended, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such amendment, waiver, discharge or termination is sought.

10.3 Governing Law; Descriptive Headings. This Warrant shall be construed and enforced in accordance with and governed by the laws of the State of Delaware. The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof.

[SIGNATURE ON FOLLOWING PAGE]

Dated: \_\_\_\_\_, 2016.

GALECTIN THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

SUBSCRIPTION AGREEMENT

[To be signed only upon exercise of Warrant]

To:

Date:

The undersigned, the Holder of the within Warrant, pursuant to the provisions set forth in the within Warrant, hereby irrevocably elects to exercise the purchase rights represented by such Warrant for, and agrees to subscribe for and purchase thereunder, \_\_\_\_\_ shares of the Common Stock covered by such Warrant and herewith makes payment of \$ \_\_\_\_\_ therefor, and requests that the certificates for such shares be issued in the name of, and delivered to, \_\_\_\_\_, whose address is: \_\_\_\_\_. If said number of shares is less than all the shares covered by such Warrant, a new Warrant shall be registered in the name of the undersigned and delivered to the address stated below.

Signature

\_\_\_\_\_

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant or on the form of Assignment attached as Exhibit B thereto.)

Address

\_\_\_\_\_

\_\_\_\_\_

[Signature Guarantee]

EXHIBIT B

ASSIGNMENT

[To be signed only upon transfer of Warrant]

For value received, the undersigned hereby sells, assigns and transfers all of the rights of the undersigned under the within Warrant with respect to the number of shares of the Common Stock covered thereby set forth below, unto:

*Name of Assignee*

*Address*

*No. of Shares*

Dated:

Signature \_\_\_\_\_

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant.)

Address \_\_\_\_\_

\_\_\_\_\_

[Signature Guarantee]

NEITHER THIS WARRANT CERTIFICATE NOR THE WARRANTS REPRESENTED HEREBY NOR ANY SHARES OF COMMON STOCK ISSUABLE UPON THE EXERCISE OF SUCH WARRANTS, NOR ANY INTEREST IN OR RIGHTS UNDER SAME, HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE LAWS OF ANY STATE, AND NEITHER THIS WARRANT CERTIFICATE NOR THE WARRANTS REPRESENTED HEREBY NOR ANY SHARES OF COMMON STOCK ISSUABLE UPON THE EXERCISE OF SUCH WARRANTS, NOR ANY INTEREST IN OR RIGHTS UNDER SAME, MAY BE SOLD OR OTHERWISE TRANSFERRED UNLESS REGISTERED UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

W-2016-B-3-\_\_

GALECTIN THERAPEUTICS, INC.  
COMMON STOCK PURCHASE WARRANT – CLASS B-3

Galectin Therapeutics, Inc., a Nevada corporation (the “Company”), for value received and subject to the terms set forth below hereby grants to 10X Fund, L.P., a Delaware limited partnership, or its registered successors and assigns (the “Holder”), the right to purchase from the Company at any time or from time to time until the date and time permitted under Section 2.1 below, \_\_\_\_\_ fully paid and nonassessable shares of the Common Stock, par value \$0.001 per share, at the purchase price of \_\_\_\_ cents (\$\_\_\_\_) per share (the “Exercise Price”). The Exercise Price and the number and character of such shares of Common Stock purchasable pursuant to the rights granted under this Warrant are subject to adjustment as provided herein.

1. Definitions. As used herein the following terms, unless the context otherwise requires, have the following respective meanings:

“*Common Stock*” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter have been reclassified or changed into, including any stock (other than Common Stock) and other securities of the Company or any other Person (corporate or other) which the Holder of this Warrant at any time shall be entitled to receive, or shall have received, upon the exercise of this Warrant, in lieu of or in addition to Common Stock, or which at any time shall be issuable or shall have been issued in exchange for or in replacement of Common Stock pursuant to Section 3.2 hereof or otherwise.

“*Issue Date*” means \_\_\_\_\_, 2016.

“*Market Value*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (other than the OTC Bulletin Board), the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg Financial L.P. (based on a Trading Day from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time); (b) if the Common Stock is then listed or quoted on the OTC Bulletin Board, the average of the high and low price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board; or (c) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then reported in the “Pink Sheets” published by the Pink Sheets, LLC (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported.

“*Registration Rights Agreement*” means the Registration Rights Agreement, dated as of the Issue Date, to which the Corporation and the original Holder are parties, as amended, modified or supplemented from time to time in accordance with its terms.

“*This Warrant*” means, collectively, this Warrant and all other stock purchase warrants issued in exchange therefor or replacement thereof.

“*Trading Day*” means a day on which the common Stock is traded on a Trading Market.

“*Trading Market*” means any of the following markets or exchanges on which the common Stock is listed or quoted for trading on the date in question: the Nasdaq SmallCap Market, the NYSE Alternext US, the New York Stock Exchange, the Nasdaq National Market, the OTC Bulletin Board or the “Pink Sheets”.

## 2. Exercise.

2.1 Exercise Period. The Holder may exercise this Warrant at any time six months after the Issue Date and before the close of business in Norcross, Georgia on the seventh (7<sup>th</sup>) anniversary of the Issue Date (the “Exercise Period”), unless earlier terminated pursuant to Section 2.6 herein.

### 2.2 Exercise Procedure.

(a) This Warrant will be deemed to have been exercised at such time as the Company has received all of the following items (the “Exercise Date”):

(i) a completed Subscription Agreement as described in Section 2.4 hereof, executed by the Person exercising all or part of the purchase rights represented by this Warrant (the “Purchaser”);

(ii) this Warrant;

(iii) if this Warrant is not registered in the name of the Purchaser, an Assignment or Assignments in the form set forth in Exhibit B hereto, evidencing the assignment of this Warrant to the Purchaser together with any documentation required pursuant to Section 8(a) hereof; and

(iv) a check payable to the order of the Company in an amount equal to the product of the Exercise Price multiplied by the number of shares of Common Stock being purchased upon such exercise.

(b) As soon as practicable after the exercise of this Warrant in full or in part, and in any event within ten (10) days after the Exercise Date, the Company at its expense will cause to be issued in the name of and delivered to the Purchaser, or as the Purchaser (upon payment by the Purchaser of any applicable transfer taxes) may direct, a certificate or certificates for the number of fully paid and non-assessable shares of Common Stock to which the Purchaser shall be entitled upon such exercise, together with any other stock or other securities and property (including cash, where applicable) to which the Purchaser is entitled upon exercise.

(c) Unless this Warrant has expired or all of the purchase rights represented hereby have been exercised, the Company at its expense will, within ten (10) days after the Exercise Date, issue and deliver to or upon the order of the Purchaser a new Warrant or Warrants of like tenor, in the name of the Purchaser or as the Purchaser (upon payment by the Purchaser of any applicable transfer taxes) may request, calling in the aggregate on the face or faces thereof for the number of shares of Common Stock remaining issuable under this Warrant.

(d) The Common Stock issuable upon the exercise of this Warrant will be deemed to have been issued to the Purchaser on the Exercise Date, and the Purchaser will be deemed for all purposes to have become the record holder of such Common Stock on the Exercise Date.

(e) The issuance of certificates for shares of Common Stock upon exercise of this Warrant will be made without charge to the Holder or the Purchaser for any issuance tax in respect thereof or any other cost incurred by the Company in connection with such exercise and the related issuance of shares of Common Stock.

(f) The holder represents and warrants that at the time of any exercise of this warrant the holder is an “accredited investor,” as such term is defined in Rule 501 promulgated under the Securities Act and acknowledges and agrees that the Company may, in its sole discretion, (i) require, as a condition to the exercise of this Warrant, that the holder provide such written evidence that such holder is an accredited investor as the time of exercise, and (ii) decline to issue the shares of Common Stock issuable upon such exercise if the Company is not satisfied that this warrant may be exercised by the holder pursuant to a valid registration exemption from the Securities Act and any applicable state securities law.

2.3 Acknowledgement of Continuing Obligations. The Company will, at the time of the exercise of this Warrant, upon the request of the Purchaser, acknowledge in writing its continuing obligation to afford to the Purchaser any rights to which the Purchaser shall continue to be entitled after such exercise in accordance with the provisions of this Warrant, provided that if the Purchaser shall fail to make any such request, such failure shall not affect the continuing obligation of the Company to afford to the Purchaser any such rights.

2.4 Subscription Agreement. The Subscription Agreement will be substantially in the form set forth in Exhibit A hereto, except that if the shares of Common Stock issuable upon exercise of this Warrant are not to be issued in the name of the Purchaser, the Subscription Agreement will also state the name of the Person to whom the certificates for the shares of Common Stock are to be issued, and if the number of shares of Common Stock to be issued does not include all the shares of Common Stock issuable hereunder, it will also state the name of the Person to whom a new Warrant for the unexercised portion of the rights hereunder is to be delivered.

2.5 Fractional Shares. If a fractional share of Common Stock would, but for the provisions of Section 2.1 hereof, be issuable upon exercise of the rights represented by this Warrant, the Company will, within ten (10) days after the Exercise Date, deliver to the Purchaser a check payable to the Purchaser in lieu of such fractional share, in an amount equal to the Market Value of such fractional share as of the close of business on the Exercise Date.

### 3. Adjustments.

3.1 Adjustments for Stock Splits, Etc. If the Company shall at any time after the Issue Date subdivide its outstanding Common Stock, by split-up or otherwise, or combine its outstanding Common Stock, or issue additional shares of its capital stock in payment of a stock dividend in respect of its Common Stock, the number of shares issuable on the exercise of the unexercised portion of this Warrant shall forthwith be proportionately increased in the case of a subdivision or stock dividend, or proportionately decreased in the case of a combination, and the Exercise Price then applicable to shares covered by the unexercised portion of this Warrant shall forthwith be proportionately decreased in the case of a subdivision or stock dividend, or proportionately increased in the case of combination.



3.2 Adjustment for Reclassification, Reorganization, Etc. In case of any reclassification, capital reorganization, or change of the outstanding Common Stock (other than as a result of a subdivision, combination or stock dividend), or in the case of any consolidation of the Company with, or merger of the Company into, another Person (other than a consolidation or merger in which the Company is the continuing corporation and which does not result in any reclassification or change of the outstanding Common Stock of the Company), or in case of any sale or conveyance to one or more Persons of the property of the Company as an entirety or substantially as an entirety at any time prior to the expiration of this Warrant, then, as a condition of such reclassification, reorganization, change, consolidation, merger, sale or conveyance, lawful provision shall be made, and duly executed documents evidencing the same from the Company or its successor shall be delivered to the Holder of this Warrant, so that the Holder of this Warrant shall have the right at any time prior to the expiration of this Warrant to purchase, at a total price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, the kind and amount of shares of stock and other securities and property receivable upon such reclassification, reorganization, change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock of the Company as to which this Warrant was exercisable immediately prior to such reclassification, reorganization, change, consolidation, merger, sale or conveyance, and in any such case appropriate provision shall be made with respect to the rights and interests of the Holder of this Warrant to the end that the provisions hereof (including, without limitation, provisions for the adjustment of the Exercise Price and of the number of shares purchasable upon exercise of this Warrant) shall thereafter be applicable in relation to any shares of stock, and other securities and property, thereafter deliverable upon exercise hereof. If, as a consequence of any such transaction, solely cash, and no securities or other property of any kind, is deliverable upon exercise of this Warrant, then, in such event, the Company may terminate this Warrant by giving the Holder hereof written notice thereof. Such notice shall specify the date (at least thirty (30) days subsequent to the date on which notice is given) on which, at 3:00 P.M., Norcross, Georgia time, this Warrant shall terminate. Notwithstanding any such notice, this Warrant shall remain exercisable, and otherwise in full force and effect, until such time of termination.

3.3 Certificate of Adjustment. Whenever the Exercise Price or the number of shares issuable hereunder is adjusted, as herein provided, the Company shall promptly deliver to the registered Holder of this Warrant a certificate of the Treasurer of the Company, which certificate shall state (i) the Exercise Price and the number of shares of Common Stock issuable hereunder after such adjustment, (ii) the facts requiring such adjustment, and (iii) the method of calculation for such adjustment and increase or decrease.

3.4 Small Adjustments. No adjustment in the Exercise Price shall be required unless such adjustment would require an increase or decrease in the Exercise Price of at least one percent; provided, however, that any adjustments which by reason of this Section 3.5 are not required to be made immediately shall be carried forward and taken into account at the time of exercise of this Warrant or any subsequent adjustment in the Exercise Price which, singly or in combination with any adjustment carried forward, is required to be made under Sections 3.1 or 3.2.

4. Reservation of Stock, etc., Issuable on Exercise of Warrant. The Company will at all times reserve and keep available, solely for issuance and delivery upon the exercise of this Warrant, all shares of Common Stock from time to time issuable upon the exercise of this Warrant.

5. Disposition of This Warrant, Common Stock, Etc.

(a) The Holder of this Warrant and any transferee hereof or of the Common Stock with respect to which this Warrant may be exercisable, by their acceptance hereof, hereby understand and agree that this Warrant and the Common Stock with respect to which this Warrant may be exercisable have not been registered under the Securities Act, and may not be sold, pledged, hypothecated, donated, or otherwise

transferred (whether or not for consideration) without an effective registration statement under the Act or an opinion of counsel satisfactory to the Company and/or submission to the Company of such other evidence as may be satisfactory to counsel to the Company, in each such case, to the effect that any such transfer shall not be in violation of the Act. It shall be a condition to the transfer of this Warrant that any transferee thereof deliver to the Company its written agreement to accept and be bound by all of the terms and conditions of this Warrant. The foregoing notwithstanding, the Company acknowledges its obligations as set forth in the Registration Rights Agreement to register the shares of Common Stock issuable upon exercise hereof.

(b) Except to the extent the resale of the shares of Common Stock issuable upon exercise hereof are registered for resale, or may be sold to the public pursuant to Rule 144(b)(1) under the Securities Act, the certificates of the Company that will evidence the shares of Common Stock with respect to which this Warrant may be exercisable will be imprinted with a conspicuous legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND MAY NOT BE SOLD, PLEDGED, HYPOTHECATED, DONATED OR OTHERWISE TRANSFERRED (WHETHER OR NOT FOR CONSIDERATION) BY THE HOLDER WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND/OR SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO COUNSEL TO THE COMPANY, IN EACH SUCH CASE, TO THE EFFECT THAT ANY SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE ACT.”

Except as set forth in the Registration Rights Agreement, the Company has not agreed to register any of the Holder’s shares of Common Stock of the Company with respect to which this Warrant may be exercisable for distribution in accordance with the provisions of the Securities Act, and the Company has not agreed to comply with any exemption from registration under the Act for the resale of the Holder’s shares of Common Stock with respect to which this Warrant may be exercised. Hence, it is the understanding of the Holder of this Warrant that by virtue of the provisions of certain rules respecting “restricted securities” promulgated by the SEC, the shares of Common Stock of the Company with respect to which this Warrant may be exercisable may be required to be held indefinitely, unless and until registered under the Securities Act (as contemplated by the Registration Rights Agreement), unless an exemption from such registration is available, in which case the Holder may still be limited as to the number of shares of Common Stock of the Company with respect to which this Warrant may be exercised that may be sold from time to time.

6. Rights and Obligations of Warrant Holder. The Holder of this Warrant shall not, by virtue hereof, be entitled to any voting rights or other rights as a stockholder of the Company. No provision of this Warrant, in the absence of affirmative actions by the Holder to purchase Common Stock of the Company by exercising this Warrant, and no enumeration in this Warrant of the rights or privileges of the Holder, will give rise to any liability of such Holder for the Exercise Price of Common Stock acquirable by exercise hereof or as a stockholder of the Company.

7. Transfer of Warrants. Subject to compliance with the restrictions on transfer applicable to this Warrant referred to in Section 5 hereof, this Warrant and all rights hereunder are transferable, in whole or in part, without charge to the registered Holder, upon surrender of this Warrant with a properly executed Assignment (in substantially the form attached hereto as Exhibit B), to the Company, and the Company at its expense will issue and deliver to or upon the order of the Holder hereof a new Warrant or Warrants in such denomination or denominations as may be requested, but otherwise of like tenor, in the name of the Holder or as the Holder (upon payment of any applicable transfer taxes) may direct.

8. Replacement of Warrants. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any Warrant and, in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of any such mutilation, upon surrender and cancellation of such Warrant, the Company at its expense will execute and deliver, in lieu thereof, a new Warrant of like tenor.

9. Company Records. Until this Warrant is transferred on the books of the Company, the Company may treat the registered Holder hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary.

10. Miscellaneous.

10.1 Notices. All notices and other communications from the Company to the Holder of this Warrant shall be mailed by first class mail, postage prepaid, to such address as may have been furnished to the Company in writing by such Holder, or, until an address is so furnished, to and at the address of the last Holder of this Warrant who has so furnished an address to the Company. All communications from the Holder of this Warrant to the Company shall be mailed by first class mail, postage prepaid, to Galectin Therapeutics, Inc., 4960 Peachtree Industrial Boulevard, Suite 240, Norcross, GA 30071, Attn:

Chief Financial Officer, or such other address as may have been furnished to the Holder in writing by the Company.

10.2 Amendment and Waiver. Except as otherwise provided herein, this Warrant and any term hereof may be amended, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such amendment, waiver, discharge or termination is sought.

10.3 Governing Law; Descriptive Headings. This Warrant shall be construed and enforced in accordance with and governed by the laws of the State of Delaware. The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof.

[SIGNATURE ON FOLLOWING PAGE]

Dated: \_\_\_\_\_, 2016.

GALECTIN THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

SUBSCRIPTION AGREEMENT

[To be signed only upon exercise of Warrant]

To:

Date:

The undersigned, the Holder of the within Warrant, pursuant to the provisions set forth in the within Warrant, hereby irrevocably elects to exercise the purchase rights represented by such Warrant for, and agrees to subscribe for and purchase thereunder, \_\_\_\_\_ shares of the Common Stock covered by such Warrant and herewith makes payment of \$ \_\_\_\_\_ therefor, and requests that the certificates for such shares be issued in the name of, and delivered to, \_\_\_\_\_, whose address is: \_\_\_\_\_. If said number of shares is less than all the shares covered by such Warrant, a new Warrant shall be registered in the name of the undersigned and delivered to the address stated below.

Signature

\_\_\_\_\_

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant or on the form of Assignment attached as Exhibit B thereto.)

Address

\_\_\_\_\_

\_\_\_\_\_

[Signature Guarantee]

EXHIBIT B

ASSIGNMENT

[To be signed only upon transfer of Warrant]

For value received, the undersigned hereby sells, assigns and transfers all of the rights of the undersigned under the within Warrant with respect to the number of shares of the Common Stock covered thereby set forth below, unto:

*Name of Assignee*

*Address*

*No. of Shares*

Dated:

Signature \_\_\_\_\_

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant.)

Address \_\_\_\_\_

[Signature Guarantee]

**AMENDED AND RESTATED BYLAWS  
OF  
GALECTIN THERAPEUTICS INC**

**ARTICLE 1  
OFFICES**

Section 1.1 Principal Office. Galectin Therapeutics Inc (the “**Corporation**”) will maintain its principal office within or without the State of Nevada as the Board of Directors (the “**Board**”) may determine from time to time.

Section 1.2 Registered Office and Other Offices. The registered office of the Corporation in Nevada shall be that of its registered agent most recently appointed in the Articles (as defined in Section 1.3), or as evidenced by a certificate of acceptance executed by a registered agent and filed with the Secretary of State of Nevada in the manner prescribed by the Nevada Revised Statutes (“**NRS**”). The Corporation may also maintain offices at such other place or places, either within or without the State of Nevada, as may be designated from time to time by the Board, where the business of the Corporation may be transacted with the same effect as though done at the principal office.

Section 1.3 Records. The Corporation will keep and maintain at its registered office a certified copy of its articles of incorporation and all amendments thereto (the “**Articles**”) and a certified copy of these bylaws and all amendments hereto (the “**Bylaws**”). The Corporation will also keep at its registered office a stock ledger or duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all stockholders of the Corporation, showing their places of residence, if known, and the number of shares held by them respectively, or a statement setting out the name of the custodian of the stock ledger or duplicate stock ledger, and the present and complete post office address, including street and number, if any, where such stock ledger or duplicate ledger is kept.

**ARTICLE 2  
STOCKHOLDERS**

Section 2.1 Stockholders’ Meetings. All meetings of stockholders will be held at such places as may be fixed from time to time by the Board, or in the absence of direction by the Board, by the President or Secretary, either within or without the State of Nevada, as will be stated in the notice of the meeting or in a duly executed waiver of notice thereof. If authorized by the Board, in its sole discretion and subject to such guidelines and procedures as the Board may adopt, stockholders may participate in a meeting of stockholders, whether annual or special, through electronic communications, videoconferencing, teleconferencing, or other available technology which allows the stockholders to communicate simultaneously or sequentially. Such participation in a meeting will constitute presence in person at the meeting.

Section 2.2 Annual Meetings. Annual meetings of stockholders will be held each year on a date and at a time to be designated by the Board. Stockholders will, at the annual meeting, elect the directors to serve on the Board and transact such other business as properly may be brought before the meeting.

Section 2.3 Special Meetings of Stockholders. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Articles, may be called by the President and will be called by the President or Secretary at the request in writing of a majority of the Board. Such request will state the purpose or purposes of the proposed meeting.

Section 2.4 List of Stockholders. The Transfer Agent (as defined in Section 6.4) or, if a Transfer Agent has not been appointed, the Secretary, will prepare, and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list is not required to include stockholders' electronic email addresses or facsimile numbers. Such list will be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place will be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list will also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

Section 2.5 Notice of Meetings.

(a) Written notice stating the time and place of any meeting of the stockholders will be delivered to each stockholder of record entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

(b) In the case of an annual meeting, the notice of meeting need not specifically state the purpose or purposes for which the meeting is called. In the case of a special meeting, the notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

(c) If a meeting is adjourned for sixty (60) days or more after the date fixed for the original meeting, notice of the adjourned meeting will be given as in the case of an original meeting. When a meeting is adjourned for a period of less than sixty (60) days in any one adjournment, it is not necessary to give any notice of the date, time, or place of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken, unless a new record date is set for the meeting.

(d) If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at his, her, or its address as it appears on the record of stockholders of the Corporation, with postage prepaid.

(e) Without limiting the manner by which notice otherwise may be given to stockholders, any notice to a stockholder may be given by a form of electronic transmission consented to by the stockholder to whom the notice is given and in the manner prescribed in NRS Section 78.370, as amended. Any such consent may be revoked by the stockholder by written or electronic notice to the Corporation. Any such consent will be deemed revoked if: (i) the Corporation is unable to deliver two (2) consecutive electronic transmissions given by the Corporation in accordance with such consent; and (ii) such inability becomes known to the Secretary or the Transfer Agent or other person responsible for giving of notice or other communications; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. For purposes of this Section 2.5(e), "electronic transmission" means facsimile transmission,



electronic mail, posting on an electronic network, or any form of communication, not directly involving the physical transmission of paper or other tangible medium, which is suitable for the retention, retrieval, and reproduction of information by the recipient, and which is retrievable and reproducible in paper form by the recipient through an automated process used in conventional commercial practice. An affidavit of the Secretary or the Transfer Agent or any other agent of the Corporation that the notice has been given, whether by a form of electronic transmission or otherwise, shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

Section 2.6 Waiver of Notice. Attendance of a stockholder at a meeting, in person or by proxy, will constitute waiver of notice of such meeting, except when the stockholder attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and so objects at the beginning of the meeting. Any stockholder may waive notice of any annual or special meeting of stockholders by executing a written waiver of notice either before or after the time of the meeting.

Section 2.7 Fixing of Record Date.

(a) For the purpose of determining the stockholders entitled to notice of and to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting, if applicable. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this Section 2.7, such determination will, unless otherwise provided by the Board, also apply to any adjournment thereof.

(b) If no record date is fixed, the record date for determining stockholders: (i) entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (ii) for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting and must fix a new record date if the meeting is adjourned to a date more than sixty (60) days later than the date set for the original meeting.

Section 2.8 Quorum and Adjournment. The holders of at least one-third (1/3) of the voting power of all classes and series of stock entitled to vote at the meeting, present in person or by proxy, regardless of whether the proxy has authority to vote on all matters, will constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by the NRS or by the Articles. Once a quorum is established at any meeting of the stockholders, the voluntary withdrawal of any stockholder from the meeting shall not affect the authority of the remaining stockholders to conduct any business which properly comes before the meeting. If, however, such quorum is not present or represented at any meeting of the stockholders, the stockholders entitled to vote at the meeting, present in person or represented by proxy, will have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented by proxy. At such adjourned meeting at which a quorum is present or represented by proxy any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the meeting.

## Section 2.9 Nominations for Director.

(a) Only persons who are nominated in accordance with the procedures set forth in this Section 2.9 will be eligible for election to the Board. Nominations of persons for election to the Board at a meeting of the stockholders at which directors are being elected may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation entitled to vote for the election of directors at such meeting who complies with the procedures set forth in this Section 2.9. Such nominations by any stockholder must be made pursuant to timely notice in proper written form to the Secretary.

(b) To be timely, a stockholder's notice must be delivered to or mailed to and received by the Secretary at the principal office of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days in advance of the first anniversary of the preceding year's annual meeting; provided, however, that in the event that (i) no annual meeting was held in the previous year or (ii) the date of the annual meeting has been changed by more than thirty (30) days from the date of the previous year's meeting, or in the event of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10<sup>th</sup> day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first. In no event will the public disclosure of an adjournment or postponement of a stockholders meeting commence a new time period for the giving of a stockholders notice as described above.

(c) To be in proper written form, a stockholder's notice to the Secretary must set forth in writing: (i) as to each person whom such stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), including, without limitation, such person's written consent to being named in the proxy statement as a nominee and to serving as director if elected as well as (A) such person's name, age, business address and residence address, (B) his or her principal occupation or employment, (C) the class and number of shares of the Corporation that are beneficially owned by such person, and (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (ii) as to such stockholder (A) the name and address, as they appear on the Corporation's books, of such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, and (B) the class and number of shares of the Corporation which are beneficially owned by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, and any material interest of such stockholder and owner. At the request of the Board, any person nominated by the Board for election as a director will furnish to the Secretary the information required to be set forth in a stockholder's notice of nomination which pertains to the nominee.

(d) No person will be eligible for election by the stockholders as a director unless nominated in accordance with the procedures set forth in this Section 2.9. The chairman of the meeting will, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed in this Section 2.9, and if he or she so determines, he or she will so declare at the meeting that the defective nomination will be disregarded.

## Section 2.10 Stockholder Proposals.

(a) At any special meeting of the stockholders, only such business will be conducted as has been brought before the meeting by or at the direction of the Board.

(b) At any annual meeting of the stockholders, only such business will be conducted as has been brought before the meeting (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the meeting by or at the direction of the Board, or (iii) by any stockholder who complies with the procedures set forth in this Section 2.10.

(c) For business to be properly brought before an annual meeting by a stockholder, the stockholder must give timely notice thereof in proper written form to the Secretary and such business must otherwise be a proper matter for stockholder action.

(d) To be timely, a stockholder's notice must be delivered to or mailed to and received by the Secretary at the principal office of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days in advance of the first anniversary of the preceding year's annual meeting; provided, however, that in the event that (i) no annual meeting was held in the previous year or (ii) the date of the annual meeting has been changed by more than thirty (30) days before or after the date of the previous year's meeting, not later than the close of business on the 10<sup>th</sup> day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first. In no event will the public disclosure of an adjournment or postponement of a stockholders meeting commence a new time period for the giving of a stockholders notice as described above.

(e) To be in proper written form, a stockholder's notice to the Secretary must set forth in writing as to each matter such stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, and the beneficial owner, if any, on whose behalf the proposal is made; (iii) the text of the proposal or business (including the text of any resolutions proposed for consideration) and the reasons for conducting such business at the meeting; (iv) the class and number of shares of the Corporation which are owned beneficially by such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; (v) any material interest in such business of the stockholder or the beneficial owner, if any, on whose behalf the proposal is made; (vi) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Exchange Act in such stockholder's capacity as a proponent of a stockholder proposal; (vii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business; and (viii) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or (B) otherwise to solicit proxies from stockholders in support of such proposal. The foregoing notice requirements will be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his, her, or its intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(f) No business will be conducted at an annual meeting except in accordance with the procedures set forth in this Section 2.10. The chairman of an annual meeting will, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 2.10, and, if he or she should so determine, he or she shall so declare at the meeting that any such business not properly brought before the meeting will not be transacted.

Section 2.11 Public Disclosure; Conduct of Nominations, and Proposals by Stockholders.

(a) For purposes of Sections 2.9 and 2.10, "public disclosure" means disclosure in a press release reported by the Dow Jones News Service, Associated Press, Reuters or any comparable national news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act.

(b) Notwithstanding Sections 2.9 and 2.10, if the stockholder (or a representative of the stockholder) does not appear at the annual meeting to present a nomination or proposal, such nomination and proposal will be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(c) Without limiting Sections 2.9 and 2.10, a stockholder will also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in Sections 2.9 and 2.10. Nothing in Sections 2.9 or 2.10 will affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.12 Conduct of Meetings. The President, or any person so designated by the President, or if the President is absent, did not so designate, or otherwise is unable to so serve, any Vice President, will chair all meetings of the stockholders. The Secretary or, in his or her absence, such other person as the chairman of the meeting may designate, will serve as secretary of the meeting. The chairman of the meeting will conduct all meetings of the stockholders in accordance with the best interests of the Corporation and will have the authority and discretion to establish reasonable procedural rules for the conduct of such meetings, including such regulation of the manner of voting and the conduct of discussion as he or she deems appropriate.

Section 2.13 Voting; Proxies.

(a) Each stockholder entitled to vote at any meeting may vote either in person or by proxy. Unless otherwise specified in the Articles or in resolutions of the Board providing for the issuance of different classes or series of shares, each stockholder entitled to vote will be entitled to one (1) vote for each share of capital stock registered in his, her, or its name on the transfer books or records of the Corporation.

(b) Except as otherwise provided herein, all votes with respect to shares standing in the name of an individual at the close of business on the record date (including pledged shares) shall be cast only by that individual or such individual's duly authorized proxy. With respect to shares held by a representative of the estate of a deceased stockholder, or a guardian, conservator, custodian or

trustee, even though the shares do not stand in the name of such holder, votes may be cast by such holder upon proof of such representative capacity. In the case of shares under the control of a receiver, the receiver may cast votes carried by such shares even though the shares do not stand of record in the name of the receiver; provided, that the order of a court of competent jurisdiction which appoints the receiver contains the authority to cast votes carried by such shares. If shares stand of record in the name of a minor, votes may be cast by the duly appointed guardian of the estate of such minor only if such guardian has provided the Corporation with written proof of such appointment.

(c) With respect to shares standing of record in the name of another corporation, partnership, limited liability company or other legal entity on the record date, votes may be cast: (i) in the case of a corporation, by such individual as the bylaws of such other corporation prescribe, by such individual as may be appointed by resolution of the Board of Directors of such other corporation or by such individual (including, without limitation, the officer making the authorization) authorized in writing to do so by the chairman of the board, if any, president, chief executive officer, if any, or any vice president of such corporation; and (ii) in the case of a partnership, limited liability company or other legal entity, by an individual representing such stockholder upon presentation to the Corporation of satisfactory evidence of his or her authority to do so.

(d) Notwithstanding anything to the contrary contained herein and except for the Corporation's shares held in a fiduciary capacity, the Corporation shall not vote, directly or indirectly, shares of its own stock owned by it; and such shares shall not be counted in determining the total number of outstanding shares entitled to vote.

(e) Any holder of shares entitled to vote on any matter may cast a portion of the votes in favor of such matter and refrain from casting the remaining votes or cast the same against the proposal, except in the case of elections of directors. If such holder entitled to vote does vote any of such stockholder's shares affirmatively and fails to specify the number of affirmative votes, it will be conclusively presumed that the holder is casting affirmative votes with respect to all shares held.

(f) With respect to shares standing of record in the name of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, voting trustees or otherwise and shares held by two (2) or more persons (including proxy holders) having the same fiduciary relationship in respect to the same shares, votes may be cast in the following manner: (i) if only one (1) person votes, the vote of such person binds all; (ii) if more than one (1) person casts votes, the act of the majority so voting binds all; and (iii) if more than one (1) person casts votes, but the vote is evenly split on a particular matter, the votes shall be deemed cast proportionately, as split.

(g) Each stockholder entitled to vote may authorize another person or persons to act for his, her, or it by proxy. All proxies must be in writing, signed by the stockholder or by his, her, or its duly authorized attorney-in-fact, and will be filed with the Secretary before being voted; provided, that no proxy will be valid after six (6) months from the date of its execution unless the person executing it specifies in it the length of time for which it is to continue in force, which in no event will exceed seven (7) years. A duly executed proxy is not revoked and will continue in full force and effect until another instrument or transmission revoking it or a properly created proxy bearing a later date is filed with or transmitted to the Secretary. The mere attendance at a meeting by a stockholder who has previously given a proxy applicable to such meeting will not constitute a revocation of such proxy.

(h) Except for the election of directors or as otherwise provided by applicable law, the Articles, or these Bylaws, at all meetings of stockholders, action by the stockholders on a matter is approved if the number of votes cast in favor of the action exceeds the number of votes cast in opposition to the action.

(i) Except as otherwise required by applicable law, the Articles, or these Bylaws, directors will be elected to the Board by a plurality of the votes cast by each of the holders of the shares of capital stock present and entitled to vote at the meeting. Cumulative voting for directors will not be required or permitted.

Section 2.14 Inspectors of Election. In advance of any meeting of stockholders, the Board will appoint one (1) or more persons, other than officers, directors, or nominees for office, as inspectors of election to act at such meeting or any adjournment thereof. Such appointment will not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the meeting will make such appointment at the meeting. If any person appointed as inspector fails to appear or fails or refuses to act at the meeting, the vacancy so created may be filled by appointment by the Board in advance of the meeting or at the meeting by the chairman of the meeting. The duties of the inspectors of election will include determining the number of shares outstanding and the voting power of each; determining the shares represented at the meeting; determining the existence of a quorum; determining the validity and effect of proxies; receiving votes, ballots, or consents; hearing and deciding all challenges and questions arising in connection with the right to vote; counting and tabulating all votes, ballots, or consents; determining the results of any election, vote, or other determination; and doing such acts as are proper to the conduct of the election or the vote with fairness to all stockholders. Any report or certificate made by them will be *prima facie* evidence of the facts stated and of the vote as certified by them. Each inspector will be entitled to a reasonable compensation for his or her services, to be paid by the Corporation.

Section 2.15 Action Without Meeting. Any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting, without prior notice, and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holders of a majority of the voting power of all classes and series of stock entitled to vote with respect to the subject matter of the action, except that if any greater proportion of voting power is required for such an action at a meeting, then the greater proportion of written consents is required. Such written consents will be delivered to the Secretary. Every written consent must bear the date of signature of each stockholder who signs the consent. No written consent will be effective unless it is delivered, with signatures of stockholders holding sufficient shares to authorize or take such action, to the Secretary within sixty (60) days after the earliest dated signature on such consent. In no instance where action is authorized by written consent need a meeting of stockholders be called or notice given.

### **ARTICLE 3** **BOARD OF DIRECTORS**

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed under the direction of the Board except as otherwise provided by the Articles or by applicable law.

Section 3.2 Number, Term, and Qualification. The number of directors on the Board will be determined from time to time by resolution adopted by the Board. In the absence of such resolution, the number of directors elected at the meeting shall constitute the number of directors of the

Corporation until the next annual meeting of stockholders, unless the number is changed prior to such meeting by action of the Board. Unless otherwise required or permitted by applicable law, a majority of the members of the Board must be Independent Directors (as defined in Section 4.4). Each director's term shall expire at the annual meeting next following the director's election as a director; provided, that, notwithstanding the expiration of the term of the director, the director shall continue to hold office until a successor is elected and qualifies or until his death, resignation, retirement, removal, or disqualification or until there is a decrease in the number of directors. Directors need not be residents of the State of Nevada or stockholders of the Corporation. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent directors.

Section 3.3 Removal. Directors may be removed from office with or without cause, at an annual or special meeting of the stockholders upon a vote of stockholders holding at least two-thirds (2/3) of the voting power of all classes and series of stock entitled to vote at such meeting. The notice of the stockholders' meeting at which such action is to be taken must state that a purpose of the meeting is removal of the director.

Section 3.4 Vacancies. A vacancy occurring on the Board, including, without limitation, a vacancy resulting from death, resignation, retirement, removal, disqualification, an increase in the number of directors, or from the failure by the stockholders to elect the full authorized number of directors, may be filled by a majority vote of the remaining directors or by the sole director remaining in office, in either case though less than a quorum.

Section 3.5 Compensation. The Corporation may compensate directors for their service on the Board as such and may provide for the payment of expenses incurred by the directors in connection with such services. Any director may serve the Corporation in any other capacity and receive compensation therefor.

Section 3.6 Chairman and Vice Chairman of the Board. The chairman of the Board (the "**Chairman of the Board**") and vice chairman of the Board (the "**Vice Chairman of the Board**") will be elected by the Board, the Chairman of the Board, or if the Chairman of the Board is unable to attend the meeting or if the Chairman of the Board is not then an Independent Director and a meeting on the Independent Directors is called, the Vice Chairman of the Board, will preside at meetings of the Board, and each shall have such other authority and perform such other duties as the Board may designate.

Section 3.7 Place of Meetings; Meetings by Telephone. The Board may hold meetings, both regular and special, either within or outside the State of Nevada. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee through electronic communications, videoconferencing, teleconferencing or other available technology which allows the stockholders to communicate simultaneously or sequentially. Such participation in a meeting will constitute presence in person at the meeting.

Section 3.8 Regular Meetings. Regular meetings of the Board may be held without notice at such date, time, and place as the Board will determine from time to time.

Section 3.9 Special Meetings; Notice. Special meetings of the Board may be called at any time by the Chairman of the Board, the President, or any two (2) directors. Notice of the date, time, and place of special meetings of the Board will be delivered personally, by first class mail, overnight courier, telephone, facsimile, or electronic mail to each director at that director's address as shown on the records of the Corporation.

Section 3.10 Waiver of Notice. Notice of the date, time, place, and purpose of any meeting of directors may be waived in writing, signed by the person entitled to notice, either before or after such meeting, and a director's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the director at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because the meeting is not lawfully called or convened. Neither of the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need to be specified in a written waiver of notice.

Section 3.11 Quorum; Vote. Except as otherwise provided by applicable law, at all meetings of the Board, a majority of the authorized number of directors will constitute a quorum for the transaction of business and the vote of a majority of the directors present at any meeting at which there is a quorum will be the act of the Board. If a quorum is present at the call of a meeting, the directors may continue to transact business until adjournment notwithstanding the withdrawal of enough directors to leave less than a quorum. In the event of a tie vote of the Board and one (1) or more directors is absent from the meeting, the matter will be deferred until the next meeting of the Board. In the event of a tie vote and all directors have participated in the meeting and have voted or abstained from voting, the Chairman of the Board will cast an additional vote and the matter will be approved or disapproved based upon such vote. In the event the Chairman of the Board has abstained from voting on the issue, the matter will be deemed disapproved due to the matter failing to obtain a majority of affirmative votes.

Section 3.12 Adjourned Meeting; Notice. If a quorum is not present at any meeting of the Board, then the directors present at the meeting may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum is present, but may not transact business.

Section 3.13 Conduct of Business. Meetings of the Board will be presided over by the Chairman of the Board, if any, or in his or her absence by the President, or in his or her absence by a chairman chosen at the meeting. The Secretary will act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The chairman of the meeting will determine the order of business and the procedures at the meeting.

Section 3.14 Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board or committee.

#### **ARTICLE 4** **COMMITTEES**

Section 4.1 Audit Committee. The Board by resolution will designate an audit committee (the "**Audit Committee**") consisting of at least three (3) members. All of the members of the Audit Committee must be Independent Directors. The Audit Committee will review the internal financial controls of the Corporation, and the integrity of its financial reporting, and have such other powers



and duties as the Board determines. The Board will adopt a charter, which may be amended from time to time, setting forth the powers and duties of the Audit Committee. The Board will designate by resolution a member of the Audit Committee as a “financial expert” within the meaning of Item 401 of Regulation S-K under the Exchange Act.

Section 4.2 Compensation Committee. The Board by resolution will designate a compensation committee (the “**Compensation Committee**”) consisting of at least two (2) members. All members of the Compensation Committee must be Independent Directors. The Compensation Committee will administer the Corporation’s compensation plans and have such other powers and duties as the Board determines. The Board will adopt a charter, which may be amended from time to time, setting forth the powers and duties of the Compensation Committee.

Section 4.3 Nominating and Corporate Governance Committee. The Board by resolution will designate a nominating and corporate governance committee (the “**Nominating and Corporate Governance Committee**”) consisting of at least two (2) members. All members of the Nominating and Corporate Governance Committee must be Independent Directors. The Nominating and Corporate Governance Committee will nominate candidates for election to the Board, formulate corporate governance principles, and have such other powers and duties as the Board determines. The Board will adopt a charter, which may be amended from time to time, setting forth the powers and duties of the Nominating and Corporate Governance Committee.

Section 4.4 Independent Directors. For purposes of this Article 4, “**Independent Director**” means a director who is not an officer or employee of the Corporation or its affiliates and who does not have any other relationship with the Corporation which, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Without limiting the foregoing, all Independent Directors must satisfy the requirements set forth in the applicable rule concerning director independence of the national securities exchange on which the Corporation’s common stock or other equity security is then listed, and if not listed then the requirements set forth in Rule 5605(a)(2) of the NASDAQ Listing Rules.

Section 4.5 Other Committees. The Board, by resolution adopted by a majority of the entire Board, may designate other committees of directors of one (1) or more directors, which shall serve at the Board’s pleasure and have such powers and duties as the Board determines.

Section 4.6 Meetings and Action of Committees.

(a) The members of all committees will serve at the pleasure of the Board. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee; provided, that such alternate members of the Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee must be Independent Directors. Each committee will keep regular minutes of its meetings and report the same to the Board at its next meeting. Each committee may adopt rules of procedure and shall meet as provided by those rules or by resolutions of the Board. Subject to the provisions requiring Independent Directors, any director may serve simultaneously on multiple committees.

(b) Except as otherwise provided in resolutions or charters adopted by the Board, all meetings and actions of committees will be governed by, and held and taken in accordance with, the provisions of Sections 3.7 through 3.14, with such changes in the context of those Bylaws as are

necessary to substitute the committee and its members for the Board and its members; provided, however, that (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee; (ii) special meetings of committees may also be called by resolution of the Board; (iii) notice of special meetings of committees will also be given to all alternate members, who will have the right to attend all meetings of the committee; (iv) a majority of the members of a committee will constitute a quorum for the transaction of business at any meeting; and (v) the affirmative vote of a majority of the members of a committee will be required to take action in respect of any matter presented to or requiring the approval of the committee.

## **ARTICLE 5**

### **OFFICERS**

Section 5.1 Designation. The officers of the Corporation will be chosen by the Board and will be a President, a Secretary, and a Treasurer. The Board may also choose one (1) or more vice presidents, assistant secretaries, and assistant treasurers, and such other officers as may be deemed necessary. Any person may hold two (2) or more offices.

Section 5.2 Appointment of Officers. The Board at its first meeting after each annual meeting of stockholders will choose a President, a Secretary, a Treasurer, and a Chief Financial Officer and may choose a Chairman of the Board, each of whom will serve at the pleasure of the Board. The Board at any time may appoint such other officers as it deems necessary who will hold their offices at the pleasure of the Board and who will exercise such powers and perform such duties as will be determined from time to time by the Board.

Section 5.3 Compensation. The compensation of the officers will be fixed from time to time by the Board, upon recommendation from the Compensation Committee, and no officer will be prevented from receiving such compensation by reason of the fact that he or she is also a director of the Corporation. The compensation of the officers or the method by which compensation is set will be set forth in the minutes of the meetings of the Board.

Section 5.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board at any time.

Section 5.5 Resignation and Removal. Any officer may resign at any time by giving written notice to the President. Any resignation will take effect on the date the President receives such notice or at any later time specified in such notice; and, unless otherwise specified in such notice, acceptance of the resignation will not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party, or of the Board to remove an officer at any time as provided in this Section 5.5. Subject to the rights, if any, of an officer under any contract of employment, the Board may remove any officer, either with or without cause, at any regular or special meeting of the Board.

Section 5.6 Chairman of the Board. The Chairman of the Board, if one is appointed and serving, or if the Chairman of the Board is unable to attend the meeting or the Chairman of the Board is not then an Independent Director and a meeting of the Independent Directors is called, the Vice Chairman of the Board, will preside at all meetings of the Board and will perform such other duties as may be from time to time assigned to him or her by the Board.

Section 5.7 President. The President will serve as the chief executive officer (the “**Chief Executive Officer**”) of the Corporation may be designated as the Chief Executive Officer if determined by the Board, and will, subject to the control of the Board, be responsible for the general supervision, direction, and control of the business and affairs and supervision of the other officers of the Corporation. The President will have the general powers and duties of management usually vested in the president or chief executive officer of a corporation and will have such other powers and duties as may be from time to time prescribed by the Board.

Section 5.8 Vice Presidents. There will be as many vice presidents (each a “**Vice President**”) as may be determined from time to time and they will perform such duties as may be from time to time assigned to them by the Board or the President. Any one of the vice presidents, as authorized by the Board, will have all the powers and perform all the duties of the President in case of the President’s temporary absence or inability to act. In case of the President’s permanent absence or inability to act, the office will be declared vacant by the Board and a successor chosen by the Board.

Section 5.9 Secretary. The secretary (the “**Secretary**”) will see that the minutes of all meetings of the Board and of any standing committees are kept. The Secretary will be the custodian of the corporate seal, if any, and will affix it to all proper instruments when deemed advisable. The Secretary will give or cause to be given required notices of all meetings of the Board. The Secretary will have charge of all the books and records of the Corporation except the books of account and in general will perform all the duties incident to the office of secretary of a corporation and such other duties as may be assigned to him or her by the Board or the President.

Section 5.10 Treasurer. The treasurer (the “**Treasurer**”) will have general custody of all of the funds and securities of the Corporation except such as may be required by applicable law to be deposited with any state official. The Treasurer will see to the deposit of the funds of the Corporation in such bank or banks as the Board may designate. If required by the Board, the Treasurer will give the Corporation such fidelity bond as may be required, and the premium therefor will be paid by the Corporation as an operating expense.

Section 5.11 Chief Financial Officer. The chief financial officer (the “**Chief Financial Officer**”) shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board or the President. The Chief Financial Officer shall perform other duties commonly incident to the office and shall perform such other duties and have such others powers as the Board or the President may from time to time delegate.

Section 5.12 Assistant Secretaries. There may be such number of assistant secretaries (each an “**Assistant Secretary**”) as the Board may from time to time determine, and such persons will perform such functions as may be from time to time assigned to them.

Section 5.13 Assistant Treasurers. There may be such number of assistant treasurers (each an “**Assistant Treasurer**”) as the Board may from time to time determine, and such persons will perform such functions as may be from time to time assigned to them.

**ARTICLE 6**  
**CAPITAL STOCK**

Section 6.1 Issuance. Shares of the Corporation's authorized stock shall, subject to any provisions or limitations of the laws of the State of Nevada, the Articles, or any contracts or agreements to which the Corporation may be a party, be issued in such manner, at such times, upon such conditions and for such consideration as shall be prescribed by the Board.

Section 6.2 Stock Certificates and Uncertificated Shares.

(a) Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by two (2) officers or agents so authorized by the Board, certifying the number of shares of stock owned by him, her, or it in the Corporation; provided, however, that the Board may authorize the issuance of uncertificated shares of some or all of the Corporation's stock. Any such issuance of uncertificated shares shall have no effect on existing certificates for shares until such certificates are surrendered to the Corporation, or on the respective rights and obligations of the stockholders. Whenever such certificate is countersigned or otherwise authenticated by a Transfer Agent, or a transfer clerk and by a registrar (other than the Corporation), then a facsimile of the signatures of any corporate officers or agents, the Transfer Agent, transfer clerk, or the registrar of the Corporation may be printed or lithographed upon the certificate in lieu of the actual signatures. In the event that any officer or officers who have signed, or whose facsimile signatures have been used on any certificate or certificates for stock cease to be an officer or officers because of death, resignation, or other reason, before the certificate or certificates for stock have been delivered by the Corporation, the certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed the certificate or certificates, or whose facsimile signature or signatures have been used thereon, had not ceased to be an officer or officers of the Corporation.

(b) Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written statement certifying the number of shares owned by him, her, or it in the Corporation and, at least annually thereafter, the Corporation shall provide to such stockholders of record holding uncertificated shares, a written statement confirming the information contained in such written statement previously sent. Except as otherwise expressly provided by applicable law, the rights and obligations of the stockholders shall be identical whether or not their shares of stock are represented by certificates.

(c) Certificates of stock shall be in such form consistent with applicable law and the Articles as shall be prescribed by the Board. All certificates evidencing shares of the Corporation's stock or other securities issued by the Corporation shall contain such legend or legends as may from time to time be required by the Board, the NRS, or such other federal, state, or local laws or regulations then in effect.

6.3 Transfer of Shares. Shares shall be transferable in the manner prescribed by applicable law, the Articles, and in these Bylaws. Transfers of Shares shall be made on the books of the Corporation only by the person named in the certificate or by his, her, or its attorney lawfully constituted in writing and, if such Shares are certificated, upon the surrender of the certificate therefore properly endorsed, and payment of all necessary transfer taxes, which certificate shall be canceled before a new certificate shall be issued; or, in the case of uncertificated Shares, upon receipt of proper transfer instructions from the registered holder of the Shares or by such person's attorney lawfully

constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring Shares in uncertificated form. Any transfer shall be accompanied by proper evidence of succession, assignment, or authority and, upon receipt of such evidence and compliance with the other applicable provisions of these Bylaws and applicable law; it shall be the duty of the Corporation to record the transaction in its books. The Corporation may treat, as the absolute owner of Shares, the person or persons in whose name or names the Shares are registered on the books of the Corporation.

Section 6.4 Transfer Agent. The Board may appoint one (1) or more transfer agents (each a “**Transfer Agent**”) for the transfer and registration of certificates of stock of any class and may require that stock certificates be countersigned and registered by one (1) or more of such Transfer Agents. The Transfer Agent will keep the stock transfer records of the Corporation, which will reflect the name and address of each stockholder of record, the number and class or series of shares issued to each stockholder of record and the date of issue of each such share.

Section 6.5 Lost, Stolen, or Destroyed Certificates. The Board may authorize the issuance of a new certificate in place of a certificate alleged to have been lost, stolen, or destroyed, upon receipt of: (a) an affidavit from the person explaining the loss, theft, or destruction; and (b) a bond or other security from the owner or legal representative of the owner in a sum as the Corporation may reasonably direct to indemnify the Corporation against any claim with respect to the certificate claimed to have been lost, stolen, or destroyed. The Board may, in its discretion, waive the affidavit and bond or other security and authorize the issuance of a new certificate in place of a certificate claimed to have been lost, stolen, or destroyed.

## **ARTICLE 7**

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

#### Section 7.1 Indemnification of Directors and Officers.

(a) For purposes of this Article, (A) “**Indemnitee**” shall mean each director or officer who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding (as hereinafter defined), by reason of the fact that he or she is or was a director or officer of the Corporation or member, manager, or managing member of a predecessor limited liability company or affiliate of such limited liability company, or is or was serving in any capacity at the request of the Corporation as a director, officer, employee, agent, partner, member, manager, or fiduciary of, or in any other capacity for, another corporation or any partnership, joint venture, limited liability company, trust, or other enterprise or affiliate; (B) “**Proceeding**” shall mean any threatened, pending, or completed action, suit, or proceeding (including, without limitation, an action, suit, or proceeding by or in the right of the Corporation), whether civil, criminal, administrative, or investigative; and (C) “**Liabilities**” shall mean any and all expenses, liabilities, and losses (including, without limitation, attorneys’ fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement).

(b) Each Indemnitee shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Nevada law, against Liabilities actually and reasonably incurred or suffered by the Indemnitee in connection with any Proceeding; *provided*, that such Indemnitee either is not liable pursuant to NRS 78.138 or acted in good faith and in a manner such Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any Proceeding

that is criminal in nature, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the Indemnitee is liable pursuant to NRS 78.138 or did not act in good faith and in a manner in which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, or that, with respect to any criminal Proceeding he or she had reasonable cause to believe that his or her conduct was unlawful.

(c) With regard solely to a Proceeding that is an action or suit by or in the right of the Corporation to procure a judgment in the Corporation's favor, the Corporation shall not indemnify an Indemnitee against Liabilities for any claim, issue, or matter as to which the Indemnitee has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Corporation or for any amounts paid in settlement to the Corporation, unless and only to the extent that the court in which the Proceeding was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such amounts as the court deems proper.

(d) Except as so ordered by a court and for advancement of expenses pursuant to this Article 7, indemnification may not be made to or on behalf of an Indemnitee if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud, or a knowing violation of law and was material to the cause of action.

(e) The expenses of Indemnitees must be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the Proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, that he or she is not entitled to be indemnified by the Corporation.

(f) Notwithstanding anything to the contrary herein, to the extent that a director or officer of the Corporation is successful on the merits or otherwise in defense of any Proceeding, including in the defense of any claim, issue, or matter arising out of an action or suit by or in the right of the Corporation to procure a judgment in the Corporation's favor, the Corporation shall indemnify him or her against Liabilities actually and reasonably incurred by him or her in connection with the defense.

Section 7.2 Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to persons under this Article 7 will be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the Indemnitee. an Indemnitee may enforce any right to indemnification or advances under this Article 7 in any court of competent jurisdiction if: (a) the Corporation denies the claim for indemnification or advances, in whole or in part; or (b) the Corporation does not dispose of such claim within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, will be entitled to be paid also the expense of prosecuting his claim. The burden of proof is on the claimant to substantiate that he is entitled to be indemnified under this Article 7. The Corporation will be entitled to raise as a defense to any such action that the claimant has not met the standard of conduct that makes it permissible under NRS Section 78.7502 for the Corporation to indemnify the claimant for the amount claimed. Neither the failure of the Corporation (including the Board, independent legal counsel, or the stockholders) to have, prior to the

commencement of such action, made a determination that indemnification of the claimant is proper in the circumstances because the claimant has met the applicable standard of conduct set forth in NRS Section 78.7502, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the stockholders) that the claimant has not met such applicable standard of conduct, will be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

Section 7.3 Non Exclusivity of Rights. The rights conferred on any person by this Article 7 will not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Articles, Bylaws, agreement, vote of stockholders, or disinterested directors or otherwise, both as to action in the person's official capacity and as to action in another capacity while serving the Corporation. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees, or agents respecting indemnification and advances, to the fullest extent not prohibited by applicable law.

Section 7.4 Survival of Rights. Indemnification pursuant to this Section shall continue as to an Indemnitee who has ceased to be a director or officer of the Corporation or member, manager, or managing member of a predecessor limited liability company or affiliate of such limited liability company, or a director, officer, employee, agent, partner, member, manager, or fiduciary of, or to serve in any other capacity for, another corporation or any partnership, joint venture, limited liability company, trust, or other enterprise or affiliate and shall inure to the benefit of his or her heirs, executors, and administrators.

Section 7.5 Insurance; Other Financial Arrangements.

(a) To the fullest extent permitted by NRS Section 78.752, the Corporation, upon approval by the Board, may purchase and maintain insurance or make other financial arrangements on behalf of any person required or permitted to be indemnified pursuant to this Article 7 for any liability asserted against him or her and liability and expenses incurred by him or her in his or her capacity as a director, officer, employee, member, manager, managing member, or agent, or arising out of his or her status as such, whether or not the Corporation has the authority to indemnify him or her against such liability and expenses.

(b) The other financial arrangements which may be made by the Corporation may include the following (i) the creation of a trust fund; (ii) the establishment of a program of self-insurance; (iii) the securing of its obligation of indemnification by granting a security interest or other lien on any assets of the Corporation; and/or (iv) the establishment of a letter of credit, guarantee or surety. No financial arrangement made pursuant to this subsection may provide protection for a person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud, or a knowing violation of law, except with respect to advancement of expenses or indemnification ordered by a court.

(c) Any insurance or other financial arrangement made on behalf of a person pursuant to this Article 7 may be provided by the Corporation or any other person approved by the Board, even if all or part of the other person's stock or other securities is owned by the Corporation. In the absence of fraud (i) the decision of the Board as to the propriety of the terms and conditions of any insurance or other financial arrangement made pursuant to this Article 7 and the choice of the person to provide the insurance or other financial arrangement is conclusive; and (ii) the insurance or other financial arrangement is not void or voidable and does not subject any director approving it to personal liability for his action; even if a director approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement.

Section 7.6 Indemnification of Employees and Other Persons. The Corporation may, by action of its Board and to the extent provided in such action, indemnify employees and other persons as though they were Indemnitees.

Section 7.7 Amendment. The provisions of this Article 7 relating to indemnification shall constitute a contract between the Corporation and each of its directors and officers which may be modified as to any director or officer only with that person's consent or as specifically provided in this Section 7.7. Notwithstanding any other provision of these Bylaws relating to their amendment generally, any repeal or amendment of this Article 7 which is adverse to any director or officer shall apply to such director or officer only on a prospective basis, and shall not limit, eliminate, or impair the rights of an Indemnitee to indemnification with respect to any action or failure to act occurring prior to the time of such repeal or amendment. Notwithstanding any other provision of these Bylaws (including, without limitation, Section 8.8 below), no repeal or amendment of these Bylaws shall affect any or all of this Article 7 so as to limit or reduce the indemnification in any manner unless adopted by the unanimous vote of the directors of the Corporation then serving; provided, that no such amendment shall have a retroactive effect inconsistent with the preceding sentence.

## **ARTICLE 8**

### **MISCELLANEOUS**

Section 8.1 Corporate Seal. The Board may, but is not required to, adopt a corporate seal, which shall be in the form of a circle and shall bear the Corporation's name and the year and state in which it was incorporated.

Section 8.2 Fiscal Year. The Board may by resolution determine the Corporation's fiscal year. Until changed by the Board, the Corporation's fiscal year shall be the calendar year.

Section 8.3 Voting of Shares in Other Corporations. Unless another person is designated by the Board, shares in other corporations which are held by the Corporation may be represented and voted by the President or a Vice President of the Corporation or by proxy or proxies appointed by one of them.

Section 8.4 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board will determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes, or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

Section 8.5 Corporate Contracts and Instruments; How Executed. The Board may authorize any officers or agents to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances.

Section 8.6 Provisions Additional to Provisions of Law. All restrictions, limitations, requirements, and other provisions of these Bylaws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be illegal.



Section 8.7 Provisions Contrary to Law. Any article, section, subsection, subdivision, sentence, clause, or phrase of these Bylaws which is contrary to or inconsistent with any applicable provisions of law, shall not apply so long as said provisions of law shall remain in effect, but such result shall not affect the validity or applicability of any other portions of these Bylaws.

Section 8.8 Amendments. The Board may make the Bylaws of the Corporation. Unless otherwise prohibited by applicable law, the Board may adopt, amend, or repeal these Bylaws, or any portion hereof, including any bylaw adopted by the stockholders. Whenever an amendment or new Bylaws are adopted, the amendment or the new Bylaws will be copied in the Corporation's minute book with the original Bylaws.

Section 8.9 Changes in Nevada Law. References in these Bylaws to Nevada law or the NRS or to any provision thereof shall be to such law as it existed on the date these Bylaws were adopted or as such law thereafter may be changed; provided, that (a) in the case of any change which expands the liability of directors or officers or limits the indemnification rights or the rights to advancement of expenses which the Corporation may provide in Article 7 hereof, the rights to limited liability, to indemnification and to the advancement of expenses provided in the Articles and/or these Bylaws shall continue as theretofore to the extent permitted by applicable law; and (b) if such change permits the Corporation, without the requirement of any further action by stockholders or directors, to limit further the liability of directors or limit the liability of officers or to provide broader indemnification rights or rights to the advancement of expenses than the Corporation was permitted to provide prior to such change, then liability thereupon shall be so limited and the rights to indemnification and the advancement of expenses shall be so broadened to the extent permitted by applicable law.

## SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”) is dated as of September 22, 2016, between Galectin Therapeutics, Inc., a Nevada corporation (the “Company”), and 10X Fund, L.P., a Delaware limited partnership (the “Purchaser”).

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 promulgated thereunder, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser agree as follows:

## ARTICLE I.

## DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

“Action” shall have the meaning ascribed to such term in Section 3.1(j).

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act. With respect to the Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as the Purchaser will be deemed to be an Affiliate of the Purchaser.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Certificate of Designation” means the Second Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Convertible Preferred Stock in the form attached hereto as Exhibit A.

“Closing Date” means the Trading Day when all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchaser’s obligations to pay the Subscription Amount and (ii) the Company’s obligations to deliver the Securities have been satisfied or waived.

“Commission” means the Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed into.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Common Stock Private Placement” means the private placement by the Company of shares of Common Stock and warrants to purchase Common Stock initiated by the Company in September 2016.

“Company Counsel” means Dentons US, LLP, with offices located at 303 Peachtree Street, NE, Suite 5300, Atlanta, GA 30308.

“Conversion Shares” means the shares of Common Stock issuable upon conversion of the Series B-3 Preferred.

“Disclosure Schedules” means the Disclosure Schedules of the Company delivered concurrently herewith.

“Dividend Shares” means the shares of Common Stock issuable in satisfaction of dividends payable on the Series B-3 Preferred.

“Effective Date” means the date that the initial Registration Statement filed by the Company pursuant to the Registration Rights Agreement is first declared effective by the Commission.

“Evaluation Date” shall have the meaning ascribed to such term in Section 3.1(r).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers, directors or other permitted grantees of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise, exchange or conversion price of such securities, and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person which is, itself or through its subsidiaries, an operating company in a business compatible with the business objectives of the Company and in which the Company receives benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

“Final Purchase Date” means the Business Day immediately subsequent to the date that is sixty (60) days from the Closing Date; provided, however, the Final Purchase Date may be extended upon mutual agreement of the Company and the Purchaser.

“GAAP” shall have the meaning ascribed to such term in Section 3.1(h).

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(z).

“Initial Subscription Amount” means the amount in United States dollars, in immediately available funds, payable by the Purchaser to the Company at the Initial Closing.

“Initial Closing” means the closing of the purchase and sale of the Initial Closing Securities pursuant to Section 2.1(a).

“Initial Closing Date” means the date hereof.

“Initial Closing Securities” means the Series B-3 Preferred and Warrants purchased by the Purchaser for the Initial Subscription Amount pursuant to Section 2.1(a) herein.

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(o).

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(c).

“Liens” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Lock Up Agreement” means the Lock Up Agreement dated the date hereof among the Company and the Purchaser in the form of Exhibit B attached hereto.

“Lock-Up Warrant” means the warrants issuable at the Initial Closing and each Subsequent Closing under the Lock-up Agreement.

“Market Price” means the previous Trading Day’s closing price of the Common Stock plus \$0.09375.

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(m).

“Original Purchase Agreement” means that Securities Purchase Agreement, dated February 12, 2009, by and between the Company and the Purchaser.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.6.

“Registration Rights Agreement” means the Registration Rights Agreement, dated the date hereof, among the Company and the Purchaser, in the form of Exhibit C attached hereto.

“Registration Statement” means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale by the Purchaser of the Conversion Shares, the Dividend Shares and the Warrant Shares.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“SEC Reports” shall have the meaning ascribed to such term in Section 3.1(h).

“Securities” means, collectively, the Series B-3 Preferred, the Warrants, the Warrant Shares, the Conversion Shares and the Dividend Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Series B Directors” means those directors elected by the holders of the Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Preferred to serve on the Board of Directors from time to time.

“Series B-3 Preferred” means shares of the Company’s Series B-3 Convertible Preferred Stock, \$0.01 par value, including Series B-3A and any other subseries of the Series B-3 Convertible Preferred Stock, which shall be convertible into Common Stock at the conversion price as set forth in the Certificate of Designation and as shown on Column 3 of Schedule 2.1(a) hereof, and which shall otherwise have the terms, rights and privileges set forth in Certificate of Designation.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“Subsequent Closing” means the closing of the purchase and sale of the Subsequent Closing Securities pursuant to Section 2.1(b).

“Subsequent Closing Date” means the Trading Day on which each Subsequent Closing takes place.

“Subsequent Closing Securities” means the Series B-3 Preferred and Warrants purchased by the Purchaser for a Subsequent Subscription Amount pursuant to Section 2.1(b) herein.

“Subsequent Subscription Amount” means the amount of money payable by the Purchaser to the Company with respect to Subsequent Closings, as agreed upon between the Company and the Purchaser.

“Subsidiary” means any subsidiary of the Company as set forth on Schedule 3.1(a), and shall, where applicable, include any subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the New York Stock Exchange is open for trading.

“Trading Market” means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE Alternext US, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTC Bulletin Board, or “Pink Sheets.”

“Transaction Documents” means this Agreement, the Warrants, the Registration Rights Agreement, the Lock Up Agreement, the Certificate of Designation and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” means Continental Stock Transfer and Trust Company, the current transfer agent of the Company, with a mailing address of 17 Battery Place, 8<sup>th</sup> floor, New York, New York 10004-1123 and a facsimile number of (212) 616-7616, and any successor transfer agent of the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (other than the OTC Bulletin Board), the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted for trading as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)); (b) if the Common Stock is then listed on the OTC Bulletin Board, the average of the high and low price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board; or (c) if the Common Stock is not then quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the “Pink Sheets” published by Pink Sheets, LLC (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported.

“Warrants” means the Class B-3 Warrants to be issued to the Purchaser at the Initial Closing and each Subsequent Closing which shall have an exercise price equal to the lesser of \$3.00 per share or such lesser amount (but not less than the closing price of the Common Stock on the Trading Day prior to the day of the issuance of the Warrants) that the parties agree at the time of the initial closing under the Common Stock Private Placement, a term of seven years, and which shall otherwise be in the form attached hereto as Exhibit D.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants or the Lock-Up Warrants.

## ARTICLE II.

### PURCHASE AND SALE

#### 2.1 Initial Closing and Subsequent Closing.

(a) On the Initial Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchaser agrees to purchase, (i) the number of shares of Series B-3 Preferred set forth in Column 2 of Schedule 2.1(a), (ii) one Warrant exercisable to purchase that number of shares of Common Stock equal to 0.75 times the aggregate number of Conversion Shares initially issuable upon conversion of the shares of Series B-3 Preferred issued at the Initial Closing, based upon the conversion price set forth in Column 3 of Schedule 2.1(a), such number of Warrant Shares being set forth in Column 4 of Schedule 2.1(a); and (iii) one Lock-Up Warrant to purchase that number of shares of Common Stock equal to 0.1667 times the Initial Subscription Amount, as shown in Column 5 of Schedule 2.1(a) (provided, however, that in no event shall the Company be obligated to issue Lock-up Warrants to purchase more than 1,000,000 shares of Common Stock). At the Initial Closing, Purchaser shall deliver the Initial Subscription Amount to the Company, and the Company shall deliver to the Purchaser the Series B-3 Preferred, the Warrant and the Lock-Up Warrant due in respect of the Initial Subscription Amount, and the Company and Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Initial Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of Company Counsel or such other location as the parties shall mutually agree.

(b) Schedule 2.1(a) may be amended upon mutual agreement of the Company and the Purchaser from time to time to reflect additional purchases, upon the terms and subject to the conditions set forth herein, by the Purchaser of Series B-3 Preferred, a Warrant and a Lock-Up Warrant at one or more Subsequent Closing Dates until the Final Purchase Date. Each such amendment shall set forth (i) in Column 2 thereof, the number of shares of Series B-3 Preferred purchased at such Subsequent Closing, (ii) in Column 4 thereof, the number of shares of Common Stock

issuable under the Warrant, which is that number of shares of Common Stock equal to 0.75 times the aggregate number of Conversion Shares initially issuable upon conversion of the shares of Series B-3 Preferred issued at the Subsequent Closing at the Conversion Price set forth in Column 3 thereof, (iii) in Column 5 thereof, the number of Warrant Shares subject to the Lock-Up Warrant issuable at such Subsequent Closing under the Lock-Up Agreement, which Lock-Up Warrant shall be exercisable to purchase that number of shares of Common Stock equal to 0.1667 times the Subsequent Subscription Amount (provided, however, that in no event shall the Company be obligated to issue Lock-up Warrants to purchase more than 1,000,000 shares of Common Stock), and (iv) the Subsequent Subscription Amount to be paid by the Purchaser with respect to such Subsequent Closing. At each Subsequent Closing, Purchaser shall deliver the Subsequent Subscription Amount to the Company, and the Company shall deliver to the Purchaser the Series B-3 Preferred, the Warrant and the Lock-Up Warrant due in respect of the Subsequent Subscription Amount, and the Company and Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Subsequent Closing. Each Subsequent Closing will be held at the offices of Company Counsel at a time mutually agreed by the parties within two (2) Trading Days after the satisfaction by the Company of all conditions of the Company required by Section 2.3(b) herein.

## 2.2 Deliveries.

- (a) On or prior to the Initial Closing Date, the Company shall deliver or cause to be delivered to the Purchaser the following:
- (i) this Agreement duly executed by the Company;
  - (ii) the Certificate of Designation which has been executed in a form acceptable for filing with the Secretary of State of the State of Nevada;
  - (iii) a legal opinion of Company Counsel, substantially in the form of Exhibit E attached hereto;
  - (iv) a certificate evidencing the number of shares of Series B-3 Preferred determined pursuant to Section 2.1(a) herein, registered in the name of Purchaser;
  - (v) the Warrant exercisable to purchase the number of Warrant Shares determined pursuant to Section 2.1(a), registered in the name of the Purchaser;
  - (vi) the Lock Up Agreement duly executed by Company; and
  - (vii) the Registration Rights Agreement duly executed by the Company.
- (b) On or prior to the Initial Closing Date, the Purchaser shall deliver or cause to be delivered to the Company the following:
- (i) this Agreement duly executed by the Purchaser;
  - (ii) the Initial Subscription Amount by wire transfer to the Company;
  - (iii) the Lock Up Agreement duly executed by the Purchaser; and
  - (iv) the Registration Rights Agreement duly executed by the Purchaser.
- (c) On or prior to each Subsequent Closing Date, the Company shall deliver or cause to be delivered to the Purchaser the following:
- (i) certificate from an officer of the Company that all conditions and obligations under this Agreement have been satisfied and the each of its representations and warranties remain true and accurate in all material respects as of the Subsequent Closing Date and shall be deemed to be given as of such date;
  - (ii) a certificate evidencing the number of shares of Series B-3 Preferred to be purchased at the Subsequent Closing determined pursuant to Section 2.1(b) herein, registered in the name of Purchaser;
  - (iii) a Warrant exercisable to purchase the number of Warrant Shares determined pursuant to Section 2.1(b), registered in the name of the Purchaser; and
  - (iv) an executed amendment to Schedule 2.1(a).
- (d) On or prior to each Subsequent Closing Date, the Purchaser shall deliver or cause to be delivered to the Company the following:
- (i) the applicable Subsequent Subscription Amount;
  - (ii) an executed amendment to Schedule 2.1(a); and
  - (iii) an executed consent approving the filing of the Certificate Amendment, if applicable.

### 2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Initial Closing and any Subsequent Closing are subject to the following conditions being met:

- (i) the accuracy in all material respects on the Initial Closing Date and each Subsequent Closing Date of the representations and warranties of the Purchaser contained herein;
- (ii) all obligations, covenants and agreements of the Purchaser required to be performed at or prior to the Initial Closing Date and/or a Subsequent Closing Date shall have been performed as of such date; and
- (iii) the delivery by the Purchaser of the items set forth in Sections 2.2(b) and 2.2(d) of this Agreement in connection with the Initial Closing and any Subsequent Closing, respectively.

(b) The obligations of the Purchaser hereunder in connection with the Initial Closing and any Subsequent Closing are subject to the following conditions being met:

- (i) the accuracy in all material respects on the Initial Closing Date and any Subsequent Closing Date of the representations and warranties of the Company contained herein;
- (ii) all obligations, covenants and agreements of the Company and its officers and directors required to be performed at or prior to the Initial Closing Date and/or a Subsequent Closing Date, including without limitation, each action set forth in Sections 4.20 hereof, shall have been performed;
- (iii) the delivery by the Company of the items set forth in Sections 2.2(a) and 2.2(c) of this Agreement in connection with the Initial Closing and a Subsequent Closing, respectively; and
- (iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof.

## ARTICLE III.

### REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to the Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, then all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation or default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has all requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of each of the Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection therewith other than in connection with the Required Approvals. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company, the issuance and sale of the Securities and the consummation by the Company of the other transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than (i) filings required pursuant to Section 4.4 of this Agreement, (ii) the filing with the Commission of the Registration Statement, (iii) application(s), if required, to each applicable Trading Market for the listing of the Securities for trading thereon in the time and manner required thereby, (iv) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws, (v) the approval of the holders of the outstanding shares of Series B-1 Convertible Preferred Stock, Series B-2 Convertible Preferred Stock and Series B-3 Preferred, (vi) the waiver of the right of participation granted to the purchasers pursuant to that certain Securities Purchase Agreement, dated November 19, 2015, by and among the Company and the identified on the signature page thereto and (vii) the waiver of the right of participation granted to the Purchaser pursuant to the Original Purchase Agreement (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Conversion Shares, Warrant Shares and Dividend Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to the Preferred Stock and the Warrants.

(g) Capitalization. The capitalization of the Company is as set forth on Schedule 3.1(g), which Schedule 3.1(g) shall also include the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the



Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans, pursuant to the conversion or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act, and sales of Securities and issuances pursuant to the Common Stock Private Placement. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents, other than (i) the right of the purchasers pursuant to that certain Securities Purchase Agreement, dated November 19, 2015, by and among the Company and the identified on the signature page thereto and (ii) the right of the Purchaser pursuant to the Original Purchase Agreement. Except as a result of the purchase and sale of the Securities and as set forth on Schedule 3.1(g), there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchaser) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as set forth on Schedule 3.1(h) attached hereto, the financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Except as set forth on Schedule 3.1(h) attached hereto, such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this

Agreement or as set forth on Schedule 3.1(i), no event, liability or development has occurred or exists with respect to the Company or its Subsidiaries or their respective business, properties, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

(j) Litigation. Except as disclosed in the SEC Reports, there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Except as disclosed in the SEC Reports, neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company which could reasonably be expected to result in a Material Adverse Effect. None of the Company’s or its Subsidiaries’ employees is a member of a union that relates to such employee’s relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. No executive officer, to the knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws applicable to its business and all such laws that affect the environment, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (“Material Permits”), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(n) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and Liens for the payment of federal, state or other taxes, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(o) Patents and Trademarks. Except as set forth in the SEC Reports, the Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or material for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could have a Material Adverse Effect (collectively, the “Intellectual Property Rights”). Neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of the Intellectual Property Rights used by the Company or any Subsidiary violates or infringes upon the rights of any Person. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage in the amount set forth on Schedule 3.1(p) attached hereto. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(q) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of \$60,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(r) Sarbanes-Oxley; Internal Accounting Controls. The Company is in material compliance with all provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission’s rules and forms. The Company’s certifying officers have evaluated the effectiveness of the Company’s disclosure controls and procedures as of the end of the period covered by the Company’s most recently filed periodic report under the Exchange Act (such date, the “Evaluation Date”). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the Company’s internal control over financial reporting (as such term is defined in the Exchange Act) that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

(s) Certain Fees. Any brokerage or finder’s fees or commissions payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents are as set forth on Schedule 3.1(s) attached hereto. The Purchaser shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(t) Private Placement. Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchaser as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(u) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become subject to the Investment Company Act of 1940, as amended.

(v) Registration Rights. Except for registration rights granted to purchasers in the Common Stock Private Placement or as set forth on Schedule 3.1(v) attached hereto, other than the Purchaser, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company that has not already been satisfied.

(w) Listing and Maintenance Requirements. The Company's Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration.

(x) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchaser as a result of the Purchaser and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchaser's ownership of the Securities.

(y) Disclosure. All disclosure furnished by or on behalf of the Company to the Purchaser regarding the Company, its business and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that the Purchaser does not make nor has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(z) Indebtedness. Schedule 3.1(z) sets forth as of the date thereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (a) any liabilities for borrowed money or amounts owed in excess of \$100,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (c) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(aa) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and each Subsidiary has filed all necessary federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been asserted or threatened against the Company or any Subsidiary.

(bb) No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has agreed to sell the Securities only after being approached by Purchaser and subsequently offered for sale only to the Purchaser within the meaning of Rule 501 under the Securities Act.

(cc) Foreign Corrupt Practices. Neither the Company, nor to the knowledge of the Company, any agent or other person acting on behalf of the Company, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

(dd) Accountants. The Company's accounting firm is set forth on Schedule 3.1(dd) of the Disclosure Schedule. To the knowledge and belief of the Company, such accounting firm (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report on Form 10-K for the year ending December 31, 2016.

(ee) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(ff) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by the Purchaser or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchaser's purchase of the Securities. The Company further represents to the Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(gg) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company's placement agent in connection with the placement of the Securities.

3.2 Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows:

(a) Organization; Authority. The Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with full right, corporate or partnership power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by the Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate or similar action on the part of the Purchaser. Each Transaction Document to which it is a party has been duly executed by the Purchaser, and when delivered by the Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Purchaser, enforceable against it in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. The Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities

(this representation and warranty not limiting the Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws) in violation of the Securities Act or any applicable state securities law. The Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time the Purchaser was offered the Securities, it and each investors in the Purchaser was, and at the date hereof it is, and on each date on which it exercises any Warrants, it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act. The Purchaser is not required to be registered as a broker-dealer under Section 15 of the Exchange Act.

(d) Experience of The Purchaser. The Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. The Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. The Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) Short Sales Prior To The Date Hereof. Other than consummating the transactions contemplated hereunder, the Purchaser has not, nor has any Person acting on behalf of or pursuant to any understanding with the Purchaser, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing from the time that the Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder until the date hereof ("Discussion Time").

#### ARTICLE IV.

##### OTHER AGREEMENTS OF THE PARTIES

###### 4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of the Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights of the Purchaser under this Agreement and the Registration Rights Agreement.

(b) The Purchaser agrees to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that the Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an “accredited investor” as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and the Registration Rights Agreement and, if required under the terms of such arrangement, the Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the Purchaser’s expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Stockholders thereunder.

(c) Certificates evidencing the Securities shall not contain any legend (including the legend set forth in Section 4.1(b)), (i) while a registration statement (including the Registration Statement) covering the resale of such Security is effective under the Securities Act, or (ii) following any sale of such Security pursuant to Rule 144, or (iii) if such Securities are eligible for sale under Rule 144(b)(1), or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent promptly after the Effective Date if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any portion of the Preferred Shares or Warrants are converted or exercised at a time when there is an effective registration statement to cover the resale of the Conversion Shares or Warrant Shares, as applicable, such Conversion Shares or Warrant Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than five Trading Days following the delivery by the Purchaser to the Company or the Transfer Agent of a certificate representing Conversion Shares, Dividend Shares or Warrant Shares, as the case may be, issued with a restrictive legend (such fifth Trading Day, the “Legend Removal Date”), deliver or cause to be delivered to the Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section. Certificates for Securities subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser’s prime broker with the Depository Trust Company System as directed by the Purchaser.

(d) In addition to the Purchaser’s other available remedies, the Company shall pay to the Purchaser, in cash, as partial liquidated damages and not as a penalty, for each \$1,000 of Conversion Shares, Dividend Shares or Warrant Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), \$10 per Trading Day (increasing to \$20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the tenth Trading Day following the Legend Removal Date until such certificate is delivered without a legend. Nothing herein shall limit the Purchaser’s right to pursue actual damages for the Company’s failure to deliver certificates representing any Securities as required by the Transaction Documents, and the Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

(e) The Purchaser agrees that the Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company’s reliance upon this understanding.

**4.2 Furnishing of Information.** Until the earliest of the time that (i) the Purchaser owns no Securities, or (ii) all of the Securities can be resold pursuant to Rule 144(b)(1) under the Securities Act, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by

the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act. As long as the Purchaser owns Securities, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchaser and make publicly available in accordance with Rule 144(c)(2) such information as is required for the Purchaser to sell the Securities under Rule 144. The Company further covenants that it will take such further action as any holder of Securities may reasonably request, to the extent required from time to time to enable such Person to sell such Securities without registration under the Securities Act within the requirements of the exemption provided by Rule 144.

4.3 Securities Laws Disclosure; Publicity. The Company shall, by 8:30 a.m. (New York City time) no later than the Trading Day four days after the date hereof, issue a Current Report on Form 8-K, disclosing the material terms of the transactions contemplated hereby, and filing the Transaction Documents as exhibits thereto. The Company and the Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor the Purchaser shall issue any such press release or otherwise make any such public statement without the prior consent of the Company, with respect to any press release of the Purchaser, or without the prior consent of the Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Purchaser, or include the name of the Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of the Purchaser, except (i) as required by federal securities law in connection with (A) any registration statement contemplated by the Registration Rights Agreement and (B) the filing of final Transaction Documents (including signature pages thereto) with the Commission and (ii) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchaser with prior notice of such disclosure permitted under this clause (ii).

4.4 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that the Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that the Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchaser.

4.5 Use of Proceeds. Except as set forth on Schedule 4.5 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not, without the consent of a majority of the Series B Directors, use such proceeds for (a) the satisfaction of any portion of the Company’s debt (other than payment of trade payables in the ordinary course of the Company’s business and prior practices), (b) the redemption of any Common Stock or Common Stock Equivalents, or (c) the settlement of any outstanding litigation.

4.6 Indemnification of Purchaser. Subject to the provisions of this Section 4.6, the Company will indemnify and hold the Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls the Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a “Purchaser Party”) harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys’ fees and costs of investigation (collectively, “Losses”) that any the Purchaser Party may suffer or incur as a result of or relating to (a) any material breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company, in their capacity as a stockholder of the Company, who is not an Affiliate of the Purchaser, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of the Purchaser’s representations, warranties or covenants under the Transaction Documents or any agreements or understandings the Purchaser may have with any such stockholder or any violations by the Purchaser of state or federal securities laws or any conduct by the Purchaser which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, the Purchaser Party shall promptly



notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of such separate counsel, a material conflict on any material issue between the position of the Company and the position of the Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (i) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (ii) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by the Purchaser Party in this Agreement or in the other Transaction Documents. In no event shall the indemnification obligations of the Company hereunder exceed the total amount of the Initial Subscription Amount plus the Subsequent Subscription Amount. All Losses due hereunder shall be net of any amounts actually recovered by the Purchaser Parties under insurance policies with respect to such Losses. The Company shall not be liable hereunder for any consequential, punitive, indirect, exemplary damages or any damages measured by lost profits or a multiple of earnings.

#### 4.7 Reservation of Common Stock and Preferred Stock.

(a) As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue the Conversion Shares, Dividend Shares and Warrant Shares required by the Transaction Documents.

(b) As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Series B-3 Preferred for the purpose of enabling the Company to issue such shares pursuant to this Agreement.

4.8 Listing of Common Stock. The Company hereby agrees to use commercially reasonable efforts to maintain the listing of the Common Stock on a Trading Market. The Company will take all action reasonably necessary to continue the listing and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Purchaser agrees to furnish such information as may be reasonably required by the Trading Market in connection with the application for listing the Conversion Shares, Dividend Shares and Warrant Shares.

4.9 Participation in Future Financing. For the purposes of Section 4.12 of the Original Purchase Agreement, the defined term "Securities" shall include the Series B-3 Preferred, and the Initial Subscription Amount under this Agreement shall be considered an "Initial Subscription Amount" under Section 4.12 thereunder, and a Subsequent Subscription Amount hereunder shall be considered a "Subsequent Subscription Amount" under Section 4.12 thereunder. The Purchaser hereby waives its right, pursuant to Section 4.12 of the Original Purchase Agreement, to participate in the Common Stock Private Placement.

4.10 Subsequent Equity Sales. Unless approved in writing by a majority of the Series B Directors, or if there are no Series B Directors by the Purchaser if the Purchaser still holds Securities, from the date hereof until such time as the Purchaser does not hold any of the Securities, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents for cash consideration involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company issues or sells (i) any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may sell securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude

any such issuance, which remedy shall be in addition to any right to collect damages. The Purchaser acknowledges and agrees that the Common Stock Private Placement is not a Variable Rate Transaction for purposes of this Agreement and the Original Purchase Agreement.

4.11 Short Sales and Confidentiality After The Date Hereof. The Purchaser covenants that neither it nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any Short Sales or hedging activities with respect to the Company's Common Stock until October 15, 2016. The Purchaser covenants that between the date of execution of this Agreement and the date the transactions contemplated by this Agreement are publicly disclosed by the Company as described in Section 4.4, the Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Disclosure Schedules.

4.12 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of the Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchaser at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of the Purchaser.

4.13 Capital Changes. Until the one year anniversary of the Effective Date, the Company shall not undertake a reverse or forward stock split or reclassification of the Common Stock without the prior written consent of the Purchaser.

4.14 IR/PR Committee. The Company shall form an IR/PR Committee with a charter in the form attached hereto as Exhibit F. Until 18 months after the date of this Agreement, the Purchaser shall have the right to appoint the chairman of the IR/PR Committee from among the members of the Board of Directors of the Company; and (b) the Company may not (i) eliminate the IR/PR Committee, (ii) make any amendments to the IR/PR Committee charter or (iii) change the number of members on the IR/PR Committee with the prior written consent of the Purchaser.

4.15. The Company shall amend its Bylaws to change Section 2.13(i) thereof to read as follows:

"(i) Except as otherwise required by applicable law, the Articles, or these Bylaws, directors will be elected to the Board by a plurality of the votes cast by each of the holders of the shares of capital stock present and entitled to vote at the meeting. Cumulative voting for directors will not be required or permitted."

The Company agrees not to amend any provision of the Bylaws that sets the requirements for election of directors without the prior written consent of the Purchaser so long as the Purchaser owns Series B-1, B-2 or B-3 Convertible Preferred Stock of the Corporation.

## ARTICLE V.

### MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by Purchaser, as to the Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchaser, by written notice to the other parties, if the Initial Closing has not been consummated on or before October 15, 2016; provided, however, that no such termination will affect the right of any party to sue for any breach by the other party (or parties).

5.2 Fees and Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages

attached hereto prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the 2<sup>nd</sup> Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.5 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchaser, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchaser (other than by merger). The Purchaser may assign any or all of its rights under this Agreement to any Person to whom the Purchaser assigns or transfers any Securities, provided such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchaser."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns (including any beneficial owner of the Purchaser that is distributed any part of the Securities issued hereunder) and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.6.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of Wilmington. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of Wilmington for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action or proceeding to enforce any provisions of the Transaction Documents, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Series B-3 Preferred and Warrants until the Final Purchase Date.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.14 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchaser and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agrees to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate. The parties expressly agree to waive any requirement that the other party post a bond as a prerequisite to obtaining injunctive relief.

5.15 Payment Set Aside. To the extent that the Company makes a payment or payments to the Purchaser pursuant to any Transaction Document or the Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.16 [Intentionally Deleted].

5.17 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.18 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.19 Construction. The parties agree that each of them and/or their respective counsel has reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments hereto.

5.20 Waiver of Jury Trial. In any action, suit or proceeding in any jurisdiction brought by any party against any other party, the parties each knowingly and intentionally, to the greatest extent permitted by applicable law, hereby absolutely, unconditionally, irrevocably and expressly waives forever trial by jury.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**GALECTIN THERAPEUTICS, INC.**

Address for Notice:

By: /S/ Peter G. Traber, MD.  
Name: Peter G. Traber, MD.  
Title: Chief Executive Officer and President

Galectin Therapeutics, Inc.  
4960 Peachtree Industrial Blvd., Suite 240,  
Norcross, GA 30071

With a copy to (which shall not constitute notice):

Dentons US, LLP  
303 Peachtree Street NE  
Suite 5300  
Atlanta, GA 30308  
Attn: Robert E. Tritt, Esq.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOR PURCHASER FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

10X FUND, L.P., a Delaware limited partnership

Address for Notice:

By: 10X Capital Management, LLC, a Florida  
limited liability company, its General Partner

c/o 10X Capital Management, LLC  
1230 Peachtree Street, N.E., Suite 2445  
Atlanta, Georgia 30309

By: /S/ James C. Czirr

Name: James C. Czirr

Title: Managing Member

With a copy to (which shall not constitute notice):

Robert J. Mottern, Esq.  
Investment Law Group of  
Davis, Gillett Mottern & Sims, LLC  
1230 Peachtree Street, NE  
Suite 2445  
Atlanta, Georgia 30309

**SCHEDULE 2.1(a)**

<u>Col. 1</u>	<u>Col. 2</u>	<u>Col. 3</u>	<u>Col. 4</u>	<u>Col. 5</u>	<u>Col. 6</u>
<u>Closing Date / Subsequent Closing Date</u>	<u>Series B-3 Preferred Shares Purchased</u>	<u>Conversion Price of Series B-3 Preferred</u>	<u>Warrant</u>	<u>Lock-Up Warrant</u>	<u>Subscription Amount / Subsequent Subscription Amount</u>
September 22, 2016	375,000	\$ 2.69375	104,408 Shares	62,500 Shares	\$ 375,000
September 29, 2016	1,125,000	Market Price on September 29, 2016	To be computed under Section 2.1	187,500 Shares	\$1,250,000

## REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement") is made and entered into as of September 22, 2016, by and among Galectin Therapeutics, Inc., a Nevada corporation (the "Issuer"), 10X Fund, L.P., a Delaware limited partnership, or its registered successors and assigns (the "Holder").

WHEREAS, pursuant to the terms of a Securities Purchase Agreement, dated as of the date hereof, by and among the Issuer and the Holder (the "Purchase Agreement"), the Issuer has agreed to issue to the Holder an aggregate of (a) 6,000,000 shares of unregistered Series B-3 Convertible Preferred Stock, par value \$0.01 per share, of the Issuer (the "Series B-3 Preferred" or "Preferred Shares"), which are each convertible into a number of shares of the common stock, \$0.001 par value per share (the "Common Stock"), of the Issuer on a basis set forth in the certificate of designation for the Preferred Shares (the "Conversion Shares");

WHEREAS, under certain circumstances, the Issuer has the right to pay dividends that accrue on the Preferred Shares in shares of Common Stock (the "Dividend Shares");

WHEREAS, pursuant to the terms of the Purchase Agreement, Holder will also receive Class B-3 Warrants (the "B-3 Warrant") to purchase 0.75 shares of Common Stock;

WHEREAS, pursuant to a the Purchase Agreement and the Lock-Up Letter Agreement, the Holder is entitled to receive warrants to purchase up to 2,000,000 shares of Common Stock (the "Lock-Up Warrants" and with the B-3 Warrants, the "Warrants"), and the shares of Common Stock issuable thereunder, the "Warrant Shares");

WHEREAS, it is a condition to the terms of the transactions contemplated by the Purchase Agreement, the Lock-Up Agreement and the Warrants that the Issuer and the Holder execute this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

#### Section 1. Definitions

As used in this Agreement:

(a) "Person" shall mean an individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization or other entity, and any government, governmental department or agency or political subdivision thereof.

(b) the terms "register," "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act (and any post-effective amendments filed or required to be filed) and the declaration or ordering of effectiveness of such registration statement;

(c) the term "Registrable Securities" means the Conversion Shares, the Dividend Shares and the Warrant Shares;

(d) "Registration Expenses" shall mean all expenses incurred by the Issuer in compliance with Section 2 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Issuer, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Issuer, which shall be paid in any event by the Issuer), and reasonable fees and expenses of one counsel to the Holders;



(e) "Registration Statement" means a registration statement under the Securities Act, on Form S-1 or such other form promulgated thereunder, together with such other registrations and filings under other securities laws that are customary with respect to a public offering of securities.

(f) "Rule 144" means Rule 144 promulgated under the Securities Act or any successor rule thereto or any complementary rule thereto (such as Rule 144A).

(g) "SEC" shall mean the Securities and Exchange Commission.

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

(i) "Selling Expenses" shall mean all underwriting discounts and selling commissions applicable to the sale of the Registrable Securities of the Holder and any fees and disbursements of counsel to the Holder which are not Registration Expenses.

## Section 2. Registration

Within six months following the Final Purchase Date (as defined in the Purchase Agreement), the Issuer shall use its commercially reasonable best efforts to take all steps necessary to effect the registration of the Registrable Securities contemplated hereby including, without limitation:

(a) prepare and file a Registration Statement with the SEC to register the Registrable Securities, and use commercially reasonable efforts, including filing any amendments to such registration statement in response to comments of the staff of the SEC, to have such registration statement declared effective by the SEC as soon as reasonably possible and remain effective for a period of ninety (90) days or until all of the Registrable Securities have been disposed of;

(b) furnish, at least five business days before filing a Registration Statement that registers such Registrable Securities, a prospectus relating thereto and any amendments or supplements relating to such Registration Statement or prospectus, to counsel selected by the Holder (the "Holder's Counsel"), copies of all such documents proposed to be filed (it being understood that such five-business-day period need not apply to successive drafts of the same document proposed to be filed so long as such successive drafts are supplied to the Holder's Counsel in advance of the proposed filing by a period of time that is customary and reasonable under the circumstances);

(c) notify Holder's Counsel in writing (i) of the receipt by the Company of any notification with respect to any comments by the SEC with respect to such Registration Statement or prospectus or any amendment or supplement thereto or any request by the SEC for the amending or supplementing thereof or for additional information with respect thereto, (ii) of the receipt by the Company of any notification with respect to the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or prospectus or any amendment or supplement thereto or the initiation or threatening of any proceeding for that purpose and (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification of such Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purposes;

(d) use its commercially reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as the Holder reasonably request and do any and all other acts and things which may be reasonably necessary or advisable to enable

the Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by the Holder; provided, however, that the Company will not be required to qualify generally to do business, subject itself to general taxation or consent to general service of process in any jurisdiction where it would not otherwise be required to do so but for this paragraph (e) or to provide any material undertaking or make any changes in its By-laws or Articles of Incorporation which the Company's Board of Directors determines to be contrary to the best interests of the Company or to modify any of its contractual relationships then existing;

(e) furnish to the Holder such number of copies of a summary prospectus, if any, or other prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as the Holder may reasonably request in order to facilitate the public sale or other disposition of such Registrable Securities;

(f) without limiting subsection (d) above, use its commercially reasonable best efforts to cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company to enable the Holder to consummate the disposition of the Registrable Securities;

(g) notify the Holder on a timely basis at any time when a prospectus relating to the Registrable Securities is required to be delivered under the Securities Act within the appropriate period mentioned in subsection (a) above, of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing and, at the request of the Holder, prepare and furnish to the Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the offerees of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(h) subject to the execution of confidentiality agreements in form and substance satisfactory to the Company, make available upon reasonable notice and during normal business hours, for inspection by the Holder any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by the Holder or underwriter (collectively, the "Inspectors"), all pertinent financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information (together with the Records, the "Information") reasonably requested by any such Inspector in connection with such Registration Statement. Any of the Information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, shall not be disclosed by the Inspectors unless (i) the disclosure of such Information is necessary to avoid or correct a misstatement or omission in the Registration Statement, (ii) the release of such Information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction or (iii) such Information has been made generally available to the public; the Holder agrees that it will, upon learning that disclosure of such Information is sought in a court of competent jurisdiction, give notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of the Information deemed confidential.

(i) use its commercially reasonable best efforts to obtain from (i) its independent certified public accountants, "cold comfort" letters, and (ii) its counsel, an opinion or opinions, each in customary form and at customary times;

(j) list such Registrable Securities on any national securities exchange on which any shares of the Common Stock are listed or, if the Common Stock is not listed on a national securities exchange, use its best efforts to qualify such Registrable Securities for quotation on the automated quotation system of the NASDAQ, National Market System or such other national securities exchange as the Holder shall reasonably request; and

(k) otherwise use its commercially reasonable best efforts to comply with all applicable rules and regulations of the SEC and make available to the Holder, as soon as reasonably practicable, earnings statements (which need not be audited) covering a period of 12 months beginning within three months after the effective date of the Registration Statement, which earnings statements shall satisfy the provisions of Section 11(a) of the Securities Act.

The Holder must timely deliver to the Issuer a duly completed and signed Selling Securityholder Notice and Questionnaire in the form of Annex A hereto.

### Section 3. Expenses of Registration

All Registration Expenses incurred in connection with any registration, qualification or compliance pursuant to this Agreement shall be borne by the Issuer, and any and all Selling Expenses of the Holder shall be borne by the Holder.

### Section 4. Indemnification

(a) The Issuer will indemnify each Holder and each of its officers and directors, as applicable, with respect to each registration which has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus, offering circular or other document (including any related registration statement, notification or the like) incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Issuer of the Securities Act or any rule or regulation thereunder applicable to the Issuer and relating to action or inaction required of the Issuer in connection with any such registration, qualification or compliance, and will reimburse each Holder and its directors and officers, as applicable, for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; provided that the Issuer will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission based upon written information furnished to the Issuer by a Holder or underwriter or any person who controls any underwriter.

(b) Each Holder will, if Registrable Securities held by it are included in the securities as to which such registration, qualification or compliance is being effected, indemnify the Issuer, each of its directors and officers and each underwriter, if any, of the Issuer's securities covered by such a registration statement, each person who controls the Issuer or such underwriter, each other stockholder of the Issuer participating in such registration, and each of their respective officers, directors, and partners, and each person controlling such other stockholder, in each case, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document made by such Holder, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements by such Holder therein not misleading, and will reimburse the Issuer and such other Holder, directors, officers, members, partners,

persons, underwriters or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Issuer by such Holder.

(c) Each party entitled to indemnification under this Section 4 (the “Indemnified Party”) shall give notice to the party required to provide indemnification (the “Indemnifying Party”) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom; provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld) and the Indemnified Party may participate in such defense at such party’s expense (unless the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in such action, in which case the fees and expenses of counsel shall be at the expense of the Indemnifying Party), and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement unless the Indemnifying Party is materially prejudiced thereby. No Indemnifying Party, in the defense of any such claim or litigation shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with the defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this Section 4 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue (or alleged untrue) statement of a material fact or the omission (or alleged omission) to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing and subject to Section 4(g) hereof, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into by, *inter alia*, the Holder in connection with any underwritten public offering contemplated by this Agreement are in conflict with the foregoing provisions, the provisions in such underwriting agreement shall be controlling.

(f) The foregoing indemnity agreement of the Issuer and the Holder is subject to the condition that, insofar as they relate to any loss, claim, liability or damage made in a preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time the registration statement in question becomes effective or the amended prospectus filed with the SEC pursuant to SEC

Rule 424(b) (the “Final Prospectus”), such indemnity agreement shall not inure to the benefit of any underwriter if a copy of the Final Prospectus was furnished to the underwriter and was not furnished to the person asserting the loss, liability, claim or damage at or prior to the time such action is required by the Securities Act.

(g) Notwithstanding any provision of this Agreement or in any underwriting agreement contemplated hereby, in accordance with Section 17(i) if the Investment Company Act of 1940, as amended, any provision in an underwriting agreement to be entered into in connection with the registration of Shares pursuant to this Agreement which protects or purports to protect the underwriter or underwriters against any liability to the Issuer or its security Holder to which such underwriter(s) would otherwise be subject by reason of willful misfeasance, bad faith or gross negligence in the performance of their duties or by reason of such underwriter(s) reckless disregard of their obligations and duties under the underwriting agreement shall be expressly made inapplicable to the Issuer.

#### Section 5. Information by the Holder

Each Holder shall furnish to the Issuer such information regarding such Holder and the distribution proposed by such Holder as the Issuer may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification or compliance referred to in this Agreement.

#### Section 6. Rule 144 Reporting

With a view to making available the benefits of certain rules and regulations of the SEC which may permit the sale of restricted securities to the public without registration, the Issuer agrees to, in addition to any and all of its other obligations under this Agreement:

(a) make and keep public information available as those terms are understood and defined in Rule 144 at all times;

(b) use its commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Issuer under the Securities Act and the Exchange Act; and

(c) so long as the Holder owns any Registrable Securities, furnish to the Holder upon request a written statement by the Issuer as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act, a copy of the most recent annual or quarterly report of the Issuer, and such other reports and documents so filed as the Holder may reasonably request and as is necessary for the Holder to avail itself of any rule or regulation of the SEC allowing the Holder to sell any of such securities without registration.

#### Section 7. Market Stand-off Agreement

The Holder agrees, if requested by the Issuer and an underwriter of the Common Stock (or other securities) of the Issuer, not to sell or otherwise transfer or dispose of any Common Stock (or other securities of the Issuer) held by the Holder during the 90-day period following the effective date of a registration statement of the Issuer filed under the Securities Act; provided, however, that the Issuer shall not make such a request unless all similarly situated selling securityholders (regardless of the number of shares owned) are to be restricted in the same manner (including duration and nature of transfer restrictions) without discrimination and the Issuer accompanies such request with an officer’s certificate identifying the other securityholders to be bound by such an agreement. If requested by the underwriters, the Holder shall execute a separate agreement to the foregoing effect. The Issuer may impose stop-transfer instructions with respect to the shares (or securities) subject to the foregoing restriction until the

end of said 90-day period. The provisions of this Section 7 shall be binding upon any transferee who acquires Registrable Securities, whether or not such transferee is entitled to the registration rights provided hereunder.

#### Section 8. Miscellaneous

(a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely within such State without regard to principles of conflicts of law.

(b) **Paragraph and Section Headings.** The 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.

(c) **Notices.** All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent to the recipient by telecopy (receipt electronically confirmed by sender's telecopy machine) if during normal business hours of the recipient, otherwise on the next business day, (iii) one business day after the date when sent to the recipient by reputable express courier service (charges prepaid), or (iv) seven business days after the date when mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the Holder and to the Issuer at the addresses indicated below:

If to the Holder:                   10X Fund, L.P.  
  c/o 10X Capital Management, LLC  
  1230 Peachtree Street, N.E., Suite 2445  
  Atlanta, GA 30309  
  Attn: James Czirr

With a copy to:                   Investment Law Group of Gillett, Mottern & Walker, LLP  
(which shall                   1230 Peachtree Street, N.E., Suite 2445  
not constitute                   Atlanta, GA 30309  
notice)                            Attention: Robert J. Mottern, Esq.  
  Fax: (404-607-6933

If to the Issuer:                   Galectin Therapeutics, Inc.  
  4960 Peachtree Industrial Blvd. #240  
  Norcross, GA 30071  
  Attn: Jack W. Callicutt, Chief Financial Officer  
  Fax.: (770) 864-1327

With a copy to:  
(which shall  
not constitute  
notice)

Dentons US LLP  
303 Peachtree Street, NE., Suite 5300  
Atlanta, GA 30308  
Attention: Robert E. Tritt, Esq.  
Fax: (404) 527-4198

or to such other address as a party hereto may, from time to time, designate in writing delivered pursuant to the terms of this Section.

(d) Amendments. The terms, provisions and conditions of this Agreement may not be changed, modified or amended in any manner except by an instrument in writing duly executed by each of the parties hereto.

(e) Assignment. Neither this Agreement nor any of the rights, duties, or obligations of any party hereunder may be assigned or delegated (by operation of law or otherwise) by either party hereto except with the prior written consent of the other party hereto; provided, however, that the Holder may assign or delegate its rights, duties and obligations hereunder to any transferee of the Holder's Registrable Securities who agrees in writing to become bound by the terms and conditions of this Agreement, so long as such assignment or delegation is not in violation of any applicable law or regulation.

(f) Counterparts. For the convenience of the parties, any number of counterparts of this Agreement may be executed by any one or more parties hereto, and each such executed counterpart shall be, and shall be deemed to be, an original, but all of which shall constitute, and shall be deemed to constitute, in the aggregate but one and the same instrument.

(g) Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter hereof. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Registration Rights Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the day and year first above mentioned.

ISSUER:

GALECTIN THERAPEUTICS, INC., a Nevada corporation

By: /S/ Jack W. Callicutt  
Name: Jack W. Callicutt  
Title: Chief Financial Officer

HOLDER:

10X FUND, L.P., a Delaware limited partnership

By: 10X Capital Management, LLC, a Florida limited liability company, its general partner

By: /S/ James Czirr  
Name: James Czirr  
Title: Managing Member



## LOCK-UP LETTER AGREEMENT

September 22, 2016

Galectin Therapeutics Inc.  
4960 Peachtree Industrial Boulevard  
Suite 240  
Norcross, GA 30071

Ladies and Gentlemen:

This Agreement contains restrictions related to the common stock ("**Common Stock**") and preferred stock ("**Preferred Stock**") of Galectin Therapeutics, Inc. (the "**Company**"). In consideration of the warrants described herein (the "**Lock-Up Warrants**") to be issued by the Company to 10X Fund, L.P. ("**10X Fund**") to purchase up to 1,000,000 shares of Common Stock and the Lock Up Warrant as described in the 2016 Securities Purchase Agreement (as hereinafter defined), and for other good and valuable consideration, 10X Fund hereby irrevocably agrees that, for a period commencing on the date hereof and ending on the eighteen (18) month anniversary of the date hereof (such 18 month period, the "**Lock-Up Period**"), without the prior written consent of the Company, 10X Fund will not, directly or indirectly, except as otherwise specified herein, (1) offer for sale, sell, contract to sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of), directly or indirectly, any Lock-Up Securities (as hereinafter defined), (2) enter into any swap, hedge or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of Lock-Up Securities, (3) enter into any "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act, whether any such transaction described in clause (1), (2) or (3) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, or (4) publicly disclose the intention to do any of the foregoing, except as set forth herein.

The term "**Lock-Up Securities**" shall mean any shares of Preferred Stock or Common Stock acquired by 10X Fund under that Securities Purchase Agreement between the Company and 10X Fund dated February 12, 2009 (the "**2009 Purchase Agreement**") or under that Securities Purchase Agreement between the Company and 10X Fund dated September 22, 2016 (the "**2016 Purchase Agreement**" and with the 2009 Purchase Agreement, the "**Purchase Agreements**"), including without limitation any shares of Common Stock acquired as a result of dividends paid on Preferred Stock, upon conversion of Preferred Stock or upon exercise of warrants acquired under either Purchase Agreement; provided, however, that Lock-Up Securities shall not include any other securities of the Company of which 10X Fund may be deemed to be the beneficial owner with the Rules and Regulations of the Securities Exchange Act of 1934, as amended.

Notwithstanding the foregoing, (i) if during the last 17 days of the Lock-Up Period, the Company issues an earnings release or material news or a material event relating to the Company occurs or prior to the expiration of the Lock-Up Period the Company announces that it will release earnings results during the 16-day period beginning on the last day of the Lock-Up Period, then the restrictions imposed by this Lock-Up Letter Agreement shall continue to apply

until the expiration of the 18-day period beginning on the issuance of the earnings release or the announcement of the material news or the occurrence of the material event, unless the Company waives such extension in writing.

No provision in this Lock-Up Letter Agreement shall be deemed to restrict or prohibit

- (1) the exercise, exchange or conversion by the undersigned of any securities exercisable or exchangeable for or convertible into shares of Common Stock, as applicable; provided that any Common Stock received upon exercise of options or warrants granted to the undersigned will also be subject to this Lock-Up Letter Agreement;
- (2) transfers of shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock to a charity or educational institution; provided any such transfer shall not involve a disposition for value;
- (3) transfers of Common Stock, Preferred Stock or warrants by 10X Fund to its limited partners who do not consent to the LP Lock-Up or are not otherwise bound by the LP Lock-Up, provided that it may do so at the time of the transfer under the terms of the Insider Trading Policy of the Company in effect at such time; and
- (4) provided that 10X Fund may otherwise do so under the Insider Trading Policy of the Company in effect at that time, 10X Fund may sell Common Stock (1) as necessary to pay 10X Fund's legal, accounting and administrative expenses (the "**Expenses**") and (2) pursuant to 10X Fund's Quarterly Liquidity Program (as such term is defined in 10X Fund's limited partnership agreement, as amended); provided, however, that 10X Fund may not sell any Common Stock under the Quarterly Liquidity Program while the 10X Fund is offering its limited partnership interests to investors.

10X Fund hereby further agrees that, (a) simultaneous with engaging in any transaction or taking any other action that is subject to the terms of this Lock-Up Letter Agreement during the period from the date of this Lock-Up Letter Agreement to and including the expiration of the Lock-Up Period (as such may have been extended pursuant to the third paragraph herein), it will give notice thereof to the Company and shall use reasonable best efforts not to complete the transaction if Company believes that the consummation of such transaction is not permitted by the prior paragraph; (b) it will provide in its governing documents that all limited partners in 10X Fund who contribute capital to fund the purchase of Lock-Up Securities under the 2016 Purchase Agreement are subject to lock-up terms at least as restrictive as those contained in this Lock-Up Letter Agreement, and (c) it will use its best efforts to obtain the consent of limited partners in 10X Fund who contributed capital to fund the purchase of Lock-Up Securities under the 2009 Purchase Agreement to agree not to withdraw their capital from the 10X Fund for the Lock-Up Period, except as permitted by the Quarterly Liquidity Program. The Company shall be a third party beneficiary of the agreements contemplated by clauses (b) and (c) above, which shall be referred to herein as the "**LP Lock-Up.**"

In furtherance of the foregoing, the Company and its transfer agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement.

In consideration for the agreements of 10X Fund contained herein, the Company shall issue to 10X Fund the Lock-Up Warrants, which shall be in substantially the form attached hereto as Exhibit A. The Lock-Up Warrants shall be issued as follows:

1. A Lock-Up Warrant to purchase 500,000 shares of Common Stock upon execution of this Agreement; and
2. Additional Lock-Up Warrants upon the closing of each sale (a "**Series B Sale**") of Series B-3 Convertible Preferred Stock on or after the date hereof by the Company to 10X Fund pursuant to the 2016 Purchase Agreement, each time to purchase that number of shares of Common Stock equal to the product of 500,000 shares multiplied by a fraction, the numerator of which is the aggregate purchase price paid to the Company in the Series B Sale and the denominator of which is \$6,000,000; provided, that in no event shall the Company be obligated to issue more than 1,000,000 Lock-Up Warrants.

The exercise price of the Lock-Up Warrants shall be equal to \$3 per share, or such lesser price per share as is contained in the warrants issued under the 2016 Purchase Agreement. The form of the Lock-Up Warrants shall be the same as the form used for the warrants issued under the 2016 Purchase Agreement.

This agreement is irrevocable and shall be binding upon the undersigned and the assigns of the undersigned.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Very truly yours,

10X Fund, L.P.

By: 10X Capital Management, LLC, General Partner

By: /S/ James C. Czirr

Name: James C. Czirr

Title: Managing Member

Accepted and Agreed:  
Galectin Therapeutics, Inc.

By: /S/ Peter G. Traber, M.D.

Peter G. Traber, M.D., Chief Executive Officer

Dated: September 22, 2016

**Galectin Therapeutics Announces Top-Line Data from Exploratory Phase 2a Pilot Trial (NASH-FX) with GR-MD-02 in NASH Patients with Advanced Fibrosis**

*Larger phase 2b clinical trial in NASH cirrhosis (NASH-CX) now completely enrolled*

*Closed private placement financing for \$1.5 million*

*Conference call to be held today at 5:30 p.m. (Eastern Time)*

**NORCOSS, Ga., September 27, 2016** – Galectin Therapeutics Inc. (NASDAQ:GALT), the leading developer of therapeutics that target galectin proteins to treat fibrosis and cancer, today announced topline results from NASH-FX, its Phase 2a clinical trial evaluating the efficacy, safety, and tolerability of GR-MD-02 in 30 nonalcoholic steatohepatitis (NASH) patients with advanced fibrosis. This exploratory, single site, short-treatment (four months of therapy), randomized study did not meet its primary biomarker endpoint as measured by LiverMultiScan (LMS, Perspectum Diagnostics), a magnetic resonance imaging test that evaluates inflammation and fibrosis. The trial also did not meet secondary endpoints that measure liver stiffness as a surrogate for fibrosis, with FibroScan® and magnetic resonance elastography (MRE). While all patients had a baseline liver biopsy to establish the diagnosis and fibrosis severity, liver biopsies were not performed at the end of the study following treatment due to safety considerations involved with liver biopsy-related risk in a short duration trial. GR-MD-02 was found to be safe and well tolerated among the patient population with no serious adverse events.

Importantly, Galectin simultaneously announced that the principal focus of its research efforts – its larger scale, one-year, multi-site trial in patients with NASH Cirrhosis (NASH-CX) – has completed enrollment one month early with 162 total subjects (exceeding the target of 156 patients), allowing for reporting of top-line results in December 2017. In further contrast to the NASH-FX trial, the NASH-CX trial is being conducted with a primary endpoint (hepatic venous pressure gradient (HVPG)) which the U.S. Food and Drug Administration may view as an acceptable surrogate for outcomes for registration trials in this patient population.

“Although there was no apparent improvement in the three non-invasive tests for assessment of liver fibrosis in this four month pilot trial, inhibition of galectin-3 with GR-MD-02 remains promising for treatment of NASH fibrosis,” said Stephen A. Harrison, M.D., the principal investigator (PI) of the NASH-FX trial, medical director of Pinnacle Clinical Research in San Antonio, TX, and Visiting Professor of Medicine at the University of Oxford, UK. “In regard to the potential activity of GR-MD-02, it is encouraging that there is an important clinical effect in moderate-to-severe psoriasis, suggesting the compound has activity in a human disease that can occur in association with NASH.”

Dr. Harrison, who is also the co-lead PI of the NASH-CX trial, continued, “The NASH-FX trial was designed to follow up on limited data from a Phase 1 study in NASH with advanced fibrosis, which suggested that FibroScan® measurements may have improved with just four doses of drug. However, as we have witnessed in other liver fibrosis trials, the relatively short treatment duration of only 4 months assessed in the NASH-FX was inadequate to see an efficacy response. Therefore, we look forward to additional results from the NASH-CX trial in which patients with NASH cirrhosis are treated for one year.”

Naga Chalasani, M.D., the other co-lead PI of the NASH-CX trial and chief of the Division of Gastroenterology and Hepatology at Indiana University, said, “In my assessment, the results from the NASH-FX trial do not diminish the significance of the NASH-CX trial. Along with the safety and tolerability profile observed in the NASH-FX trial, the different patient population, much larger enrollment, rigorous study design and longer duration of therapy offer compelling rationale to complete the NASH-CX trial.”

With over 1,600 drug doses administered there is now substantial clinical trial experience with GR-MD-02. There is no evidence of serious adverse effects related to the drug, highlighting the good safety profile of the therapy in this patient population with advanced stage disease. In the NASH-CX trial 64 patients have already completed 6 months of dosing with a low drop-out rate of only 3 patients prematurely exiting the trial.

In support for continued funding of the NASH-CX trial, a private placement financing for \$1.5 million from a single source was signed on September 22, 2016. “It is encouraging that we have the confidence of a highly-respected businessman such as Mr. Richard Uihlein, who has now invested \$1.5 million in Galectin through a limited partnership investment fund, which adds to his current significant stake in the company,” added Peter Traber, M.D., Galectin’s president, chief executive officer and chief medical officer. “Mr. Uihlein is further committed to helping the company progress through the completion of the NASH-CX trial. We will continue to pursue the additional funding required to support our clinical development program”.

### **Conference Call Information**

Galectin will hold a conference call today at 5:30 p.m. Eastern Time to provide an update by Dr. Peter Traber and Dr. Stephen Harrison on the progress of its lead development program.

**Date:** September 27, 2016

**Time:** 5:30 p.m. Eastern Time

**Toll-Free:** 1-888-317-6003

**Passcode:** 4681161

**Webcast:** <http://services.choruscall.com/links/galt160927.html>

The full transcript of the conference call can be accessed on the Investor Relations page of Galectin's website, <http://investor.galectintherapeutics.com/>, approximately 24 hours after the completion of the call, and will be available for 60 days following the call.

### **About NASH-CX Trial**

Galectin announced in August the completion of patient recruitment ahead of original expectations in the NASH-CX trial, its Phase 2b clinical trial with GR-MD-02 in patients with NASH with cirrhosis. The Company has enrolled 162 liver biopsy-confirmed NASH cirrhosis patients into the treatment phase, with the original goal to enter 156 patients. Enrolled patients are receiving either 8 mg/kg or 2 mg/kg of GR-MD-02 or placebo every other week for 52 weeks, for a total of 26 doses. The primary study endpoint is a reduction of hepatic venous pressure gradient (HVPG). Patients treated with GR-MD-02 will be evaluated to determine the change in HVPG as compared to patients treated with placebo. HVPG will be correlated with secondary endpoints of liver biopsy fibrosis staging at baseline and the end of the trial, measurement of liver stiffness (FibroScan®), and assessment of liver metabolism (<sup>13</sup>C-methacetin breath test, Exalenz). The Company projects topline results of this trial will be available in December 2017. More information on the NASH-CX trial may be found in a post on Dr. Traber's blog, [CEO Perspectives](#) and at [www.clinicaltrials.gov](http://www.clinicaltrials.gov).

### **About GR-MD-02**

GR-MD-02 is a complex carbohydrate drug that targets galectin-3, a critical protein in the pathogenesis of fatty liver disease and fibrosis. Galectin-3 plays a major role in diseases that involve scarring of organs including fibrotic disorders of the liver, lung, kidney, heart and vascular system. The drug binds to galectin proteins and disrupts their function. Preclinical data in animals have shown that GR-MD-02 has robust treatment effects in reversing liver fibrosis and cirrhosis.

### **About Fatty Liver Disease with Advanced Fibrosis and Cirrhosis**

Non-alcoholic fatty liver disease (NAFLD) has become the most common disease of the liver, generally associated with the rise in obesity rates. NAFLD is characterized by the presence of fat in the liver in people who consume little or no alcohol, and when associated with inflammation and cell damage is called non-alcoholic steatohepatitis (NASH). Over time, patients with NASH can develop fibrosis, or scarring of the liver, which may progress to severe fibrosis, called cirrhosis. Approximately one in four people in the world have NAFLD, with 5% of those developing cirrhosis, and 2% eventually dying of the disease. These data translate into ~20,000,000 liver-related deaths among patients currently alive with NAFLD. There are no drug therapies approved for the treatment of NASH, liver fibrosis, or cirrhosis, for which liver transplant is the only treatment available. A recent analyst estimate indicated that by 2025 the worldwide market for NASH treatments could approach \$35 billion.

### **About Galectin Therapeutics**

Galectin Therapeutics is developing promising carbohydrate-based therapies for the treatment of fibrotic liver disease and cancer based on the Company's unique understanding of galectin proteins, which are key mediators of biologic function. Galectin seeks to leverage extensive

scientific and development expertise as well as established relationships with external sources to achieve cost-effective and efficient development. The Company is pursuing a development pathway to clinical enhancement and commercialization for its lead compounds in liver fibrosis and cancer. Additional information is available at [www.galectintherapeutics.com](http://www.galectintherapeutics.com).

### **Forward Looking Statements**

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements relate to future events or future financial performance, and use words such as “may,” “estimate,” “could,” “expect” and others. They are based on management’s current expectations and are subject to factors and uncertainties that could cause actual results to differ materially from those described in the statements. These statements include those regarding the hope that Galectin’s development program for GR-MD-02 will lead to the first therapy for the treatment of fatty liver disease with advanced fibrosis and/or cirrhosis. Factors that could cause actual performance to differ materially from those discussed in the forward-looking statements include, among others, that Galectin may not be successful in developing effective treatments and/or obtaining the requisite approvals for the use of GR-MD-02 or any of its other drugs in development. The Company’s current clinical trial and any future clinical studies may not produce positive results in a timely fashion, if at all, and could prove time consuming and costly. Plans regarding development, approval and marketing of any of Galectin’s drugs are subject to change at any time based on the changing needs of the Company as determined by management and regulatory agencies. Regardless of the results of any of its development programs, Galectin may be unsuccessful in developing partnerships with other companies or raising additional capital that would allow it to complete its ongoing or subsequent trials. Galectin has incurred operating losses since inception, and its ability to successfully develop and market drugs may be impacted by its ability to manage costs and finance continuing operations. For a discussion of additional factors impacting Galectin’s business, see the Company’s Annual Report on Form 10-K for the year ended December 31, 2015, and subsequent filings with the SEC. You should not place undue reliance on forward-looking statements. Although subsequent events may cause its views to change, management disclaims any obligation to update forward-looking statements.

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