

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Merger and Change of Name

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Yard House USA, LLC		08/20/2007	LIMITED LIABILITY COMPANY: DELAWARE

RECEIVING PARTY DATA

Name:	Yard House USA, Inc.
Street Address:	8001 Irvine Center Drive
Internal Address:	Suite 1170
City:	Irvine
State/Country:	CALIFORNIA
Postal Code:	92618
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 8

Property Type	Number	Word Mark
Registration Number:	2620238	YARD HOUSE
Registration Number:	2441608	YARD HOUSE
Serial Number:	77116697	YARD HOUSE RESTAURANTS
Serial Number:	77116684	YARD HOUSE
Serial Number:	76621017	YARD HOUSE BAR & GRILL
Serial Number:	77203378	YARD HOUSE TO YOUR HOUSE
Serial Number:	77203369	YARD HOUSE GREAT FOOD · CLASSIC ROCK WORLD'S LARGEST SELECTION OF DRAFT BEER
Serial Number:	77203341	YARD HOUSE TO YOUR HOUSE

CORRESPONDENCE DATA

Fax Number: (212)755-7306
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 212-326-3717

CH \$215.00 2620238

Email: NYTEF@JONESDAY.COM
Correspondent Name: Nancy A. Zoubek
Address Line 1: Jones Day
Address Line 2: 222 East 41st Street
Address Line 4: New York, NEW YORK 10017

ATTORNEY DOCKET NUMBER:	505234-600011
NAME OF SUBMITTER:	Nancy A. Zoubek
Signature:	/Nancy A. Zoubek/
Date:	08/24/2007

Total Attachments: 16

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CERTIFICATE OF MERGER
OF
YARD HOUSE USA, LLC
WITH AND INTO
TSG-YH NEWCO, INC.

Pursuant to the provisions of Section 264 and Section 251 of the General Corporation Law of the State of Delaware (the "*DGCL*"), TSG-YH Newco, Inc., a Delaware corporation (the "*Corporation*"), DOES HEREBY CERTIFY:

1. That the names and states of domicile of the constituent entities are as follows:

<u>Name</u>	<u>State of Domicile</u>
TSG-YH Newco, Inc.	Delaware
Yard House USA, LLC	Delaware

2. The Amended and Restated Recapitalization Agreement (as amended, the "*Merger Agreement*"), dated as of June 22, 2007, by and among the Corporation, Yard House USA, LLC, a Delaware limited liability company, Yard House Restaurants, LLC, a California limited liability company, GSP Consulting, Inc., a California corporation, Steele Platt, Harald Herrmann, Carlito Jocson, Jeff Uttz, Craig Carlyle, YH USA Sub, LLC, a California limited liability company, and TSG5 L.P., a Delaware limited partnership, has been approved, adopted, certified, executed and acknowledged by each constituent entity, in accordance with the requirements of Section 264 and Section 251 of the DGCL. The adoption of the Merger Agreement was effected by a written consent of the sole stockholder of all the issued and outstanding shares of common stock of TSG-YH Newco, Inc., and the written consent of unitholders that own more than 50% of the issued and outstanding units of Yard House USA, LLC.

3. TSG-YH Newco, Inc. shall be the surviving corporation after the merger (the "*Surviving Corporation*"). The name of the Surviving Corporation shall be changed to Yard House USA, Inc. ←

4. The Certificate of Incorporation of the Corporation shall be amended and restated, effective as of the effectiveness of the merger, in the manner attached hereto as Exhibit A (the "*Amended Certificate*"), and such Amended Certificate shall be the Certificate of Incorporation of the Surviving Corporation.

5. The merger is to become effective upon filing of this Certificate of Merger with the Secretary of State of the State of Delaware.

6. The executed Merger Agreement is on file at: 8001 Irvine Center Drive, Suite 1170, Irvine, California 92618, the principal place of business of the Surviving Corporation.

7. A copy of the aforesaid Merger Agreement will be furnished by the Surviving Corporation, upon request and without cost, to any stockholder or any member, as applicable, of any constituent entity.

IN WITNESS WHEREOF, the undersigned, being a duly authorized officer of the Surviving Corporation, has caused this Certificate of Merger to be executed as of this 20 day of August, 2007.

TSG-YH NEWCO, INC.


By: 
Pierre LeComte
Vice President

EXHIBIT A

Amended and Restated Certificate of Incorporation

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
TSG-YH NEWCO, INC.**

TSG-YH Newco, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Company*"), hereby certifies as follows:

1. The name of the Company is TSG-YH Newco, Inc.
2. The original Certificate of Incorporation of the Company was filed with the Secretary of State of the State of Delaware on June 13, 2007.
3. This Amended and Restated Certificate of Incorporation (this "*Certificate*") restates and integrates the provisions of the original Certificate of Incorporation and was duly proposed by the board of directors and duly adopted by the stockholders of the Company in the manner and by the vote prescribed in Section 242 and Section 245 of the General Corporation Law of the State of Delaware.
4. The text of the original Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of the Company is Yard House USA, Inc.

ARTICLE II

The address of the registered office of the Company in the State of Delaware is 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the name of the registered agent at that address is The Corporation Trust Company.

ARTICLE III

The duration of the Company is perpetual.

ARTICLE IV

The purpose for which the Company is organized is to conduct any lawful business, and to promote any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE V

Section 5.1 **Definitions**. For purposes of this Certificate, the following general definitions shall apply:

"Affiliate" shall mean, with respect to any Person, a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. For purposes of this definition, **"control"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Board" shall mean the Board of Directors of the Company.

"Certificate" shall mean this Amended and Restated Certificate of Incorporation of the Company.

"Class A Common Stock" shall have the meaning set forth in Section 5.2 of this Certificate.

"Class B Common Stock" shall have the meaning set forth in Section 5.2 of this Certificate.

"Class B Conversion Time" shall have the meaning set forth in Section 5.8(a) of this Certificate.

"Class B Eligible Participants" shall mean the TSG Investors and all Related Persons, Affiliates and other permitted transferees holding shares of Class B Common Stock.

"Class B Equivalent" shall mean (without duplication) the Class B Common Stock and the Converted Class A Shares.

"Class B Majority" shall mean the holders of a majority of the shares of Class B Common Stock, as of any date.

"Common Stock" shall have the meaning set forth in Section 5.2 of this Certificate.

"Company" shall have the meaning specified in the preamble of this Certificate.

"Company Debt" shall mean, as of any given date, the total consolidated indebtedness for borrowed money (including, without limitation, any indebtedness secured by, or otherwise relating to, any real property) of the Company and its subsidiaries.

"Converted Class A Share" shall mean any share of Class A Common Stock issued upon conversion of shares of Class B Common Stock in accordance with Section 5.8(a) of this Certificate; *provided, however*, that following the consummation of the relevant Liquidity Event, such share of Class A Common Stock shall no longer be deemed to be a Converted Class A Share, except for determining amounts or making calculations in connection with such Liquidity Event.

"Derivative Securities" shall mean securities convertible into, exchangeable for, or containing an option or warrant or other right to purchase shares of Common Stock.

"DGCL" shall mean the General Corporation Law of the State of Delaware.

"Director" shall mean a member of the Board.

"Fair Market Value" shall mean, as of any given date, (a) as to Securities traded on the organized securities markets, the average closing price for the Securities in question for the 30 trading days immediately preceding the date of determination or (b) as to Securities not traded on an organized exchange, a good faith determination by a majority of the Board (including the affirmative vote of at least one Platt Director, as defined in the Stockholders Agreement, if at the time of such determination, at least one Platt Director is currently serving on the Board) of the fair value of one share (or unit) of such Securities as of the applicable reference date. In determining Fair Market Value, the Board shall (x) consider, in addition to other factors that it determines in good faith to be relevant, the purchase price of the shares in recent arms-length sales of shares by the Company and stockholders and (y) not give effect to any discount that may otherwise be attributable to the fact that such shares that are the subject of such valuation constitute less than a majority of the shares outstanding. If the Board is unable to determine the Fair Market Value of the relevant shares pursuant to clause (b) above, the Board shall select an independent and reputable investment banking firm reasonably acceptable to the Board to determine the Fair Market Value of the relevant shares and the determination of such investment banking firm shall be binding upon the parties. The Company shall bear the fees and expenses of such investment banking firm.

"Fully-Diluted Basis" shall mean all of the following (without duplication): (a) the total number of shares of Common Stock issued and outstanding at any time; and (b) the total number of shares of Common Stock issuable upon the full exercise of all Derivative Securities, assuming the full exercise thereof and assuming with regard to convertible securities the full conversion thereof into shares of Common Stock based upon the respective conversion amount applicable to such convertible securities and the respective conversion price applicable to such convertible securities; *provided, however*, that, solely for the purpose of making this determination, no shares of Class B Common Stock shall be considered to be convertible securities.

"Liquidity Event" shall mean (i) a Public Offering in which the Securities that are sold include shares of Class B Equivalents that are owned by any of the Class B Eligible Participants, (ii) the sale of all or substantially all of the assets of the Company and its subsidiaries to any Person or members of a Related Group (other than to the Company or a wholly-owned subsidiary thereof), or (iii) any transaction whether by sale of stock, merger, recapitalization, reorganization or otherwise, pursuant to which one or more Persons or members of a Related Group would own in the aggregate common equity or other voting securities of the Company representing in excess of 50% of the total combined voting power of all outstanding voting securities of the Company (or the surviving entity or parent, as applicable) upon completion of such transaction (provided, however, that the foregoing does not apply as a result of TSG Investors owning in excess of 50% of the common equity or voting securities of the Company outstanding as of the date this Certificate becomes effective, and shall exclude (x) any transfers between or among the TSG Investors, and Related Persons and Affiliates thereof and the TSG Pledge permitted under Section 2.2(d) of the Stockholders Agreement, (y) an increase in such ownership percentage resulting from a reduction of the total number of shares outstanding, and (z) the acquisition by the TSG Investors of additional shares of the common equity or voting securities of the Company outstanding), in each case in a single transaction or series of related transactions (each such transaction under this subparagraph (ii), a **"Majority Stock Transaction"**).

"Liquidity Event Proceeds" shall mean the sum of (i) all cash received, in the aggregate, by the Company's stockholders in their capacity as stockholders or (except in the case of a Public Offering) the Company and (ii) the Fair Market Value of all securities received, in the aggregate, by the Company or its stockholders in their capacity as stockholders, from a purchaser or purchasers upon the consummation of a Liquidity Event.

"Majority Stock Transaction" shall have the meaning specified in the definition of "Liquidity Event."

"Person" shall mean any natural person or any corporation, limited liability company, partnership, trust or other legal entity.

"Public Offering" shall mean a public offering and sale by the Company or any holders of shares of the Company's capital stock for cash pursuant to an effective registration statement under the Securities Act.

"Recapitalization Agreement" shall mean that certain Amended and Restated Recapitalization Agreement by and among the Company, Yard House USA, LLC, Yard House Restaurants, LLC, GSP Consulting, Inc., Steele Platt, Harald Herrmann, Carlito Jocson, Jeff Uttz, Craig Carlyle, YH USA Sub, LLC and TSG5, dated as of June 22, 2007 (a copy of which is on file with the Company).

"Related Group" shall mean any two or more Persons with an agreement or arrangement, whether written or oral, to act together for a common purpose of acquiring, selling or otherwise dealing in the Securities.

"Related Person" shall mean, with respect to any Person who is a natural person, such Person's spouse, children, grandchildren, brothers, sisters, nieces, nephews, parents, mother-in-law, father-in-law and any spouse of any such Person listed above, including natural, step and adopted relationships (each such Person herein a **"Relative"**), and, with respect to any Person, any partnership, trust, corporation, limited liability company or other legal entity of which more than 50% of the beneficial ownership or interest is directly or indirectly held by such Person or any Relative of such Person, and any other Affiliate of such Person.

"Relative" shall have the meaning specified in the definition of "Related Person."

"Securities" shall mean the Common Stock and any other class or series of common or preferred stock of the Company that may hereafter be authorized.

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

"Stockholders Agreement" shall mean that certain Stockholders Agreement, dated as of even date herewith, by and among the Company and its stockholders (a copy of which is on file with the Company), as same may be amended from time to time.

"TSG5" shall mean TSG5 L.P., a Delaware limited partnership.

"*TSG Investor*" shall mean each of TSG5, Charles H. Esserman, James L. O'Hara, Alexander S. Panos, M. Hadley Mullin, Yasser U. Toor, Pierre LeComte, Brian Krumrei, Melis Kahya, Dan Costello, Jenny Baxter, YHIG, LLC, Emporia Capital Funding LLC and Ruby Chester Trust dated May 30, 1997, and the term "*TSG Investors*" shall mean all of such Persons collectively.

Section 5.2 **Authorized Shares.** The total number of shares of capital stock that the Company shall have the authority to issue shall be divided into the following classes. The first class shall consist of One Thousand Five Hundred (1,500) shares of Class A Common Stock, par value \$0.001 per share (the "*Class A Common Stock*"). The second class shall consist of Three Thousand (3,000) shares of Class B Common Stock, par value \$0.001 per share (the "*Class B Common Stock*"). The Class A Common Stock and Class B Common Stock are sometimes collectively referred to herein as the "*Common Stock*."

Section 5.3 **Voting Rights; Fractional Shares.** The Class A Common Stock and the Class B Common Stock shall vote as a single class, and each share of Class A Common Stock and Class B Common Stock shall be entitled to one vote in all matters to be voted on by the holders of Common Stock. The voting of fractional shares shall be permitted.

Section 5.4 **Liquidation Preference.** Except as otherwise provided in Section 5.6, the Class A Common Stock and the Class B Common Stock shall be treated on a *pari passu* basis in connection with any liquidation or dissolution of the Company.

Section 5.5 **Definitions Related to a Liquidity Event.** The following definitions shall apply in Section 5.6:

(a) "*Class B Percentage*" shall mean, as of any given date, the aggregate percentage (rounded to two decimal places) calculated by multiplying (i) 100 times (ii) the result of (x) the aggregate, total number of Class B Equivalents owned by the Class B Eligible Participants or in which any of the foregoing have an ownership interest, divided by (y) the total number of shares of Common Stock issued and outstanding on a Fully-Diluted Basis.

(b) "*Target Equity Value*" shall mean \$349,569,656 minus the aggregate value of distributions made to the stockholders of the Company in each stockholder's capacity as a stockholder of the Company prior to the occurrence of a Liquidity Event.

(c) "*Flex Percentage*" shall mean (i) 50% multiplied by (ii) a fraction, (x) the numerator of which is the total number of shares of Common Stock issued and outstanding on a Fully-Diluted Basis after giving effect to the Recapitalization Agreement and (y) the denominator of which is the total number of shares of Common Stock issued and outstanding on a Fully-Diluted Basis on the date of the consummation of any given Liquidity Event.

(d) "*Transferred Percentage*" shall mean the percentage of the total amount of outstanding shares of capital stock outstanding immediately prior to the consummation of any Liquidity Event on a Fully-Diluted Basis that will be transferred upon consummation of such Liquidity Event.

(e) "*Implied Equity Value*" shall mean one of the following, as applicable:

(i) If the relevant Liquidity Event is a sale of all or substantially all of the Company's assets, the amount equal to (x) the Liquidity Event Proceeds, minus (y) the Company Debt; or

(ii) If the relevant Liquidity Event is a Public Offering, the sale of stock, merger, recapitalization, reorganization or other transaction (except for transactions described in clause (i) above), an amount equal to (x) the Liquidity Event Proceeds, divided by (y) the Transferred Percentage.

(f) "**Class B Amount**" shall mean the sum of:

(A) the product of (x) the Class B Percentage, multiplied by (y) the Implied Equity Value or the Target Equity Value, whichever is less; plus

(B) the product of (x) the Flex Percentage, multiplied by (y) (1) if the Implied Equity Value exceeds the Target Equity Value, then the Implied Equity Value minus the Target Equity Value or (2) if the Implied Equity Value is less than or equal to the Target Equity Value, then zero.

(g) "**Class A Amount**" shall mean the Implied Equity Value, minus the Class B Amount.

(h) "**Class A Per Share Amount**" shall mean, with respect to any given Liquidity Event, the quotient of (i) the Class A Amount, divided by (ii) the total number of shares of Class A Common Stock issued and outstanding, on a Fully-Diluted Basis (excluding any Converted Class A Shares), on the date a Liquidity Event occurs.

(i) "**Class B Per Share Amount**" shall mean, with respect to any given Liquidity Event, the quotient of (i) the Class B Amount, divided by (ii) the total number of Class B Equivalent shares on the date of the Liquidity Event.

(j) "**Class B Flex Factor**" shall mean, with respect to any given Liquidity Event, the quotient of (i) the Class B Per Share Amount, divided by (ii) the Class A Per Share Amount. This definition shall also apply in Section 5.8.

(k) "**Adjusted Class B Transferred Shares**" shall mean, with respect to any given Liquidity Event, the product of (i) the total number of Class B Equivalent shares sold or otherwise transferred as a result of the Liquidity Event, multiplied by (ii) the Class B Flex Factor.

(l) "**Total Adjusted Shares**" shall mean the sum of (i) the Adjusted Class B Transferred Shares, plus (ii) the total number of shares of Class A Common Stock issued and outstanding, on a Fully-Diluted Basis (excluding any Converted Class A Shares), on the date of the Liquidity Event.

(m) "**Class B Transferred Percentage**" shall mean the quotient of (i) the Adjusted Class B Transferred Shares, divided by (ii) the Total Adjusted Shares.

Section 5.6 **Distribution of Proceeds Upon a Liquidity Event.** Upon the consummation of a Liquidity Event, the Liquidity Event Proceeds that are (A) received by the Company and available to be distributed to the stockholders of the Company, following the full repayment and satisfaction of all outstanding debt, liabilities and other obligations of the Company or (B) paid to, or available to, the holders of Common Stock (in each case, the "***Distributable Proceeds***"), shall be paid or distributed (as applicable) to the holders of Common Stock as follows:

(a) The Distributable Proceeds to be distributed to the holders of Class B Equivalents shall be distributed as follows:

(i) If the relevant Liquidity Event is a sale of all or substantially all of the assets of the Company and its subsidiaries, then the Class B Amount shall be distributed to each holder of Class B Equivalents in an amount equal to the product of (x) the Class B Amount, multiplied by (y) a fraction, the numerator of which is the total number of shares of Class B Equivalents owned by the relevant holder immediately prior to the consummation of the Liquidity Event, and the denominator of which is the total number of shares of Class B Equivalents outstanding immediately prior to the consummation of the Liquidity Event.

(ii) If the relevant Liquidity Event is the sale of 100% of the outstanding shares of capital stock through a Majority Stock Transaction, then the Class B Amount shall be distributed to each holder of Class B Equivalents in an amount equal to the product of (x) the Class B Amount, multiplied by (y) a fraction, the numerator of which is the total number of shares of Class B Equivalents owned by the relevant holder immediately prior to the consummation of the Liquidity Event, and the denominator of which is the total number of shares of Class B Equivalents outstanding immediately prior to the consummation of the Liquidity Event.

(iii) If the relevant Liquidity Event is a Public Offering within the meaning of subparagraph (i) of the definition of Liquidity Event and if less than all of the Company's outstanding shares of capital stock are sold in such Public Offering, then the Class B Public Offering Amount (as defined below) shall be distributed to each holder of shares of Class B Equivalents who sold shares of Class B Equivalents in such Public Offering in an amount equal to the product of (x) the Class B Public Offering Amount, multiplied by (y) a fraction, the numerator of which is the total number of shares of Class B Equivalents sold by the relevant holder in such Public Offering, and the denominator of which is the total number of shares of Class B Equivalents sold in such Public Offering. For purposes hereof, the "***Class B Public Offering Amount***" shall mean the product of (a) the Distributable Proceeds, multiplied by (b) the Class B Transferred Percentage.

(iv) If the relevant Liquidity Event is a Majority Stock Transaction in which less than 100% of the Company's capital stock is sold or otherwise transferred, then the Class B Partial Sale Amount (as defined below) shall be distributed to each holder of Class B Equivalents who sold or otherwise transferred shares of Class B Equivalents in such Majority Stock Transaction in an amount equal to the product of (x) the Class B Partial Sale Amount, multiplied by (y) a fraction, the numerator of which is the total number of shares of Class B Equivalents sold or otherwise transferred by the relevant holder in such Majority Stock

Transaction, and the denominator of which is the total number of shares of Class B Equivalents sold or otherwise transferred in such Majority Stock Transaction. For purposes hereof, the "**Class B Partial Sale Amount**" shall mean the product of (a) the Distributable Proceeds, multiplied by (b) the Class B Transferred Percentage.

(b) The Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents in accordance with Section 5.6(a) above shall be distributed as follows:

(i) If the relevant Liquidity Event is a sale of all or substantially all of the assets of the Company and its subsidiaries, then the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(i) shall be distributed to each holder of Class A Common Stock (excluding any Converted Class A Shares) in an amount equal to the product of (x) the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(i), multiplied by (y) a fraction, the numerator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) owned by the relevant holder immediately prior to the consummation of the Liquidity Event, and the denominator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) outstanding immediately prior to the consummation of the Liquidity Event.

(ii) If the relevant Liquidity Event is the sale of 100% of the outstanding shares of capital stock through a Majority Stock Transaction, then the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(ii) shall be distributed to each holder of Class A Common Stock (excluding any Converted Class A Shares) in an amount equal to the product of (x) the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(ii), multiplied by (y) a fraction, the numerator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) owned by the relevant holder immediately prior to the consummation of the Liquidity Event, and the denominator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) outstanding immediately prior to the consummation of the Liquidity Event.

(iii) If the relevant Liquidity Event is a Public Offering within the meaning of subparagraph (i) of the definition of Liquidity Event and if less than all of the Company's outstanding shares of capital stock are sold in such Public Offering, then the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(iii) shall be distributed to each holder of shares of Class A Common Stock (excluding any Converted Class A Shares) who sold shares of Class A Common Stock in such Public Offering in an amount equal to the product of (x) the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(iii), multiplied by (y) a fraction, the numerator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) sold by the relevant holder in such Public Offering, and the denominator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) sold in such Public Offering.

(iv) If the relevant Liquidity Event is a Majority Stock Transaction in which less than 100% of the Company's capital stock is sold or otherwise transferred, then the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(iv) shall be distributed to each holder of Class A Common Stock (excluding any Converted Class A Shares) who sold or otherwise transferred shares of Class A Common Stock in such Majority Stock Transaction in an amount equal to the product of (x) the Distributable Proceeds in excess of the amounts distributed to the holders of Class B Equivalents pursuant to Section 5.6(a)(iv), multiplied by (y) a fraction, the numerator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) sold or otherwise transferred by the relevant holder in such Majority Stock Transaction, and the denominator of which is the total number of shares of Class A Common Stock (excluding any Converted Class A Shares) sold or otherwise transferred in such Majority Stock Transaction.

Section 5.7 **Additional Shares.**

(a) *Increase in Outstanding Shares.*

(i) If the number of shares of Class A Common Stock that are issued and outstanding immediately following the effectiveness of this Certificate at any time is increased by a stock split, stock dividend payable in shares of Class A Common Stock or other capital stock or by a subdivision or split up of shares of Class A Common Stock or similar event, then, on the date such payment is made or such change is effective, the number of shares of Class B Common Stock issued and outstanding shall be increased in proportion to such increase of issued and outstanding shares of Class A Common Stock so that the holders of Class B Common Stock maintain an aggregate ownership percentage of the outstanding shares of Common Stock equal to that existing immediately prior to such event.

(ii) If the number of shares of Class B Common Stock that are issued and outstanding immediately following the effectiveness of this Certificate at any time is increased by a stock split, stock dividend payable in shares of Class B Common Stock or other capital stock or by a subdivision or split up of shares of Class B Common Stock or similar event, then, on the date such payment is made or such change is effective, the number of shares of Class A Common Stock issued and outstanding shall be increased in proportion to such increase of issued and outstanding shares of Class B Common Stock so that the holders of Class A Common Stock maintain an aggregate ownership percentage of the outstanding shares of Common Stock equal to that existing immediately prior to such event.

(b) *Decrease in Outstanding Shares.*

(i) If the number of shares of Class A Common Stock that are issued and outstanding immediately following the effectiveness of this Certificate at any time is decreased by a combination or reclassification of the issued and outstanding shares of Class A Common Stock or similar event, then, on the effective date of such event, the number of shares of Class B Common Stock issued and outstanding shall be decreased in proportion to such decrease of issued and outstanding shares of Class A Common Stock so that the holders of Class B Common Stock maintain an aggregate ownership percentage of the outstanding shares of Common Stock equal to that existing immediately prior to such event.

(ii) If the number of shares of Class B Common Stock that are issued and outstanding immediately following the effectiveness of this Certificate at any time is decreased by a combination or reclassification of the issued and outstanding shares of Class B Common Stock or similar event, then, on the effective date of such event, the number of shares of Class A Common Stock issued and outstanding shall be decreased in proportion to such decrease of issued and outstanding shares of Class B Common Stock so that the holders of Class A Common Stock maintain an aggregate ownership percentage of the outstanding shares of Common Stock equal to that existing immediately prior to such event.

(c) *Dividends.*

(i) If the Company shall declare a cash dividend upon its Class A Common Stock or shall distribute to holders of its Class A Common Stock shares of its capital stock (other than Class A Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the Company or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Class A Common Stock or other securities of the Company convertible into or exchangeable for Class A Common Stock), which is not paid or distributed also to holders of Class B Common Stock, then, in each such case, the holders of shares of Class B Common Stock shall, concurrent with the distribution to holders of Class A Common Stock, receive a like distribution in proportion to the number of shares of Class B Common Stock held by each such holder.

(ii) If the Company shall declare a cash dividend upon its Class B Common Stock or shall distribute to holders of its Class B Common Stock shares of its capital stock (other than Class B Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the Company or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Class B Common Stock or other securities of the Company convertible into or exchangeable for Class B Common Stock), which is not paid or distributed also to holders of Class A Common Stock, then, in each such case, the holders of shares of Class A Common Stock shall, concurrent with the distribution to holders of Class B Common Stock, receive a like distribution in proportion to the number of shares of Class A Common Stock held by each such holder.

Section 5.8 **Conversion of Class B Common Stock.**

(a) If the Board determines that, in connection with any Liquidity Event, the conversion of shares of Class B Common Stock into shares of Class A Common Stock is necessary or otherwise desirable in order to facilitate the consummation of such Liquidity Event, then, upon notice from the Company to each holder of shares of Class B Common Stock, each share of Class B Common Stock shall be convertible into a number of shares of Class A Common Stock equal to the Class B Flex Factor (rounded to two decimal places) as calculated with respect to such Liquidity Event, and upon the issuance of such Converted Class A Shares, such shares shall be fully paid and nonassessable. The close of business on the date of such notice shall be the time of conversion (the "*Class B Conversion Time*"), and each certificate for shares of outstanding Class B Common Stock shall thereupon be deemed to no longer represent shares of Class B Common Stock, but shall instead be deemed to represent the shares of Class A

Common Stock issuable upon conversion of the shares of Class B Common Stock represented by such certificate prior to conversion.

(b) If the Company elects to convert shares of Class B Common Stock into shares of Class A Common Stock in accordance with Section 5.8(a), each holder shall surrender the certificate or certificates for such shares of Class B Common Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), at the principal office of the Company (or the office of the Company's transfer agent for Class B Common Stock, if other than the Company) during usual business hours. Such certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The Company shall, as soon as reasonably practicable after the Class B Conversion Time, issue and deliver at such office to such holder of Class B Common Stock, or to his, her or its nominees, a certificate or certificates for the number of shares of Class A Common Stock to which such holder shall be entitled.

(c) The Company shall at all times when Class B Common Stock shall be outstanding, reserve and keep available out of its authorized but unissued shares of Class A Common Stock, for the purpose of effecting the conversion of Class B Common Stock, such number of its duly authorized shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Class B Common Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Class B Common Stock, the Company shall take such corporate action as may be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite approval of any necessary amendment to this Certificate.

ARTICLE VI

The number of directors that will constitute the whole Board will initially be five and shall thereafter be fixed by, or in the manner provided in, the Bylaws of the Company. The initial directors will be as provided in the Stockholders Agreement.

ARTICLE VII

The name and mailing address of the initial incorporator of the Company is James L. O'Hara, 600 Montgomery Street, Suite 2900, San Francisco, California 94111.

ARTICLE VIII

To the fullest extent permitted by the DGCL as in effect on the date hereof, and as hereafter amended from time to time, a director of the Company shall not be personally liable to

the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any successor statute is amended after adoption of this provision to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended from time to time, or such successor statute. Any repeal or modification of this Article VIII by the stockholders of the Company shall not affect adversely any right or protection of a director of the Company existing at the time of such repeal or modification or with respect to events occurring prior to such time.

ARTICLE IX


The Company will, to the fullest extent permitted by DGCL as in effect on the date hereof, and as hereafter amended from time to time, indemnify every person who is or was a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a director or officer or is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another Company or of a partnership, joint venture, trust, employee benefit plan, or other enterprise, including service on a committee formed for any purpose (and, in each case, his or her heirs, executors, and administrators), against all expense, liability, and loss (including counsel fees, judgments, fines, ERISA excise taxes, penalties, and amounts paid in settlement) actual and reasonable incurred or suffered in connection with such action, suit, or proceeding, to the fullest extent permitted by applicable law, as in effect on the date hereof and as hereafter amended. Such indemnification may include advancement of expenses in advance of final disposition of such action, suit, or proceeding, subject to the provision of any applicable statute. The indemnification and advancement of expenses provisions of this Article IX shall not be exclusive of any other right that any person (and his or her heirs, executors, and administrators) may have or hereafter acquire under any statute, this Certificate, the Company's Bylaws, resolution adopted by the stockholders, resolution adopted by the Board, agreement, or insurance purchased by the Company or otherwise, both as to action in his or her official capacity and as to action in another capacity. The Company is hereby authorized to provide for indemnification and advancement of expenses through its Bylaws, resolutions of stockholders, resolution of the Board, or agreement, in addition to that provided by this Certificate.

ARTICLE X

The Bylaws of the Company may be amended, altered, modified, or repealed by resolution adopted by the Board or the stockholders of the Company, subject to any provisions of law then applicable.

IN WITNESS WHEREOF, I, the undersigned, being a duly authorized officer of the Company, do hereby execute this Certificate, this 20 day of August, 2007.

TSG-YH NEWCO, INC.

By: 
Pierre LeComte
Vice President