

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Tugboat, Inc.		05/16/2010	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Own Products, Inc.		
<b>Street Address:</b>	465 California Street		
<b>Internal Address:</b>	Suite 1290		
<b>City:</b>	San Francisco		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	94104		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	77928617	OWN	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(415)591-1400		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	415-591-1000		
<b>Email:</b>	trademarksSF@winston.com		
<b>Correspondent Name:</b>	Kimberly A. Eckhart c/o Winston & Strawn		
<b>Address Line 1:</b>	101 California Street		
<b>Address Line 2:</b>	Suite 3900		
<b>Address Line 4:</b>	San Francisco, CALIFORNIA 94111		
<b>ATTORNEY DOCKET NUMBER:</b>	250827.01002		
<b>NAME OF SUBMITTER:</b>	Kimberly A. Eckhart		
<b>Signature:</b>	/Kimberly A. Eckhart/		

CH \$40.00 77928617

Date:

07/16/2010

**Total Attachments: 25**

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# Delaware

PAGE 1

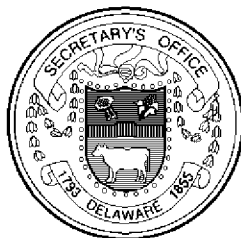
*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TUGBOAT, INC.", CHANGING ITS NAME FROM "TUGBOAT, INC." TO "OWN PRODUCTS, INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF MAY, A.D. 2010, AT 3:18 O'CLOCK P.M.

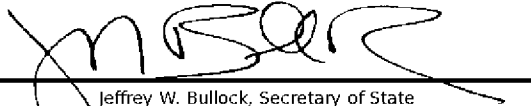
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4690367 8100

100518386



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

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7997438

DATE: 05-17-10

TRADEMARK  
REEL: 004243 FRAME: 0921

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
TUGBOAT, INC.**

**Pursuant to Section 242 of the General Corporation Law of the State of Delaware**

The undersigned, Alastair Dorward, certifies that he is the President and Chief Executive Officer of Tugboat, Inc., a corporation organized and existing under the laws of the State of Delaware and does hereby further certify as follows:

1. The name of the Corporation is Tugboat, Inc.
2. The Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware on June 3, 2009.
3. This Second Amended and Restated Certificate of Incorporation amends, restates and supersedes the Amended and Restated Certificate of Incorporation of this corporation.
4. This Second Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate") has been duly adopted by unanimous written consent of the Board of Directors of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.
5. The text of the Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

**FIRST.** The name of the Corporation is Own Products, Inc. (the "Corporation"),

**SECOND.** Its registered office in the State of Delaware is to be located at 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801 and its registered agent at such address is The Corporation Trust Company.

**THIRD.** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

**FOURTH.** The total number of shares of all classes of stock which the Corporation shall have authority to issue is:

(i) 15,591,180 shares of Common Stock, \$0.0001 par value per share ("Common Stock") and

(ii) 14,191,180 shares of Preferred Stock, \$0.0001 par value per share ("Preferred Stock"), of which 900,000 shares shall be designated Series A Convertible Preferred Stock (the

“Series A Preferred Stock”) and 13,291,180 shares shall be designated Series A-1 Convertible Preferred Stock (the “Series A-1 Preferred Stock”).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to, and qualified by, the rights of the holders of the Preferred Stock.

2. Voting. Except as otherwise provided in this Second Amended and Restated Certificate of Incorporation, the holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Increase in Authorized Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Preferred Stock and Common Stock, voting as a single class, and without a separate class vote by the Common Stock, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

4. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. No dividend shall be paid on any share of Common Stock (other than stock dividend on the Common Stock payable solely in the form of additional shares of Common Stock) unless all accrued and unpaid dividends on the Series A Preferred Stock and Series A-1 Preferred Stock provided for in Article Fourth, Section B below have been paid in full.

B. PREFERRED STOCK.

1. Board of Directors. The holders of the Series A-1 Preferred Stock shall have the right to the exclusion of all other classes or series of the Corporation’s capital stock, voting at a meeting of stockholders called for the purpose or by written consent, separately from the Common Stock and all other series of Preferred Stock, to elect two (2) individuals (the “Series A-1 Directors”) to serve on the Board of Directors of the Corporation. Any member of the Board of Directors elected pursuant to this Section may be removed at any time with or without cause by, and only by, the written consent of a majority of the voting power of the then outstanding Series A-1 Preferred Stock. Any vacancy on the Board of Directors created by the resignation, removal, incapacity or death of any director elected pursuant to this Section shall only be filled by another individual elected pursuant to this Section.

2. Dividends.

(a) The holders of shares of Series A-1 Preferred Stock shall be entitled to receive, out of funds legally available therefor, for each share of Series A-1 Preferred Stock held by them, cumulative cash dividends at the annual rate of eight percent (8%) of the Series A-1 Original Issue Price (as defined below) accruing from the date each such share of Series A-1 Preferred Stock was first issued by the Company, in each case, prior and in preference to any declaration or payment of any dividend to the holders of shares of Series A Preferred Stock and the holders of Common Stock (the "Series A-1 Dividends"). Subject to Section 3(a), dividends on the Series A-1 Preferred Stock shall be paid ratably to the holders of Series A-1 Preferred Stock in accordance with the amounts that would be paid to each such holder upon a full dividend payment. Such dividends shall be payable when, as and if declared by the Corporation's Board of Directors. So long as any shares of Series A-1 Preferred Stock shall be outstanding, no dividend shall be paid or declared, nor shall any other distribution be made on any shares of Series A Preferred Stock or Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all Series A-1 Dividends, if any, shall have been paid or declared and set apart.

(b) After payment of the Series A-1 Dividends, holders of Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, for each share of Series A Preferred Stock held by them, cumulative cash dividends at the annual rate of eight percent (8%) of the Series A Original Issue Price (as defined below) accruing from the date each such share of Series A Preferred Stock was first issued by the Company, in each case, prior and in preference to any declaration or payment of any dividend to the holders of Common Stock (the "Series A Dividends"). Subject to Section 3(b), dividends on the Series A Preferred Stock shall be paid ratably to the holders of Series A Preferred Stock in accordance with the amounts that would be paid to each such holder upon a full dividend payment. Such dividends shall be payable when, as and if declared by the Corporation's Board of Directors. So long as any shares of Series A Preferred Stock shall be outstanding, no dividend shall be paid or declared, nor shall any other distribution be made on any shares of Common Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all Series A Dividends, if any, shall have been paid or declared and set apart.

(c) In the event that the Board of Directors of the Corporation shall declare a dividend payable upon the then outstanding shares of Common Stock (other than a stock dividend on the Common Stock payable solely in the form of additional shares of Common Stock), the holders of the Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled, in addition to any cumulative dividends to which the Series A Preferred Stock and Series A-1 Preferred Stock may be entitled under Sections 2(a) and 2(b) above, to receive the amount of dividends per share of Series A Preferred Stock and Series A-1 Preferred Stock held by them that would be payable on the number of whole shares of the Common Stock into which each share of such Series A Preferred Stock and Series A-1 Preferred Stock held by each holder thereof could be converted pursuant to the provisions of Section 5 below, such number to be

determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend.

(d) The Board of Directors of the Corporation may fix a record date for the determination of holders of shares of Common Stock, Series A Preferred Stock or Series A-1 Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be no more than sixty (60) days and no less than ten (10) days prior to the date fixed for the payment thereof.

3. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of all debts and liabilities of the Corporation, each holder of shares of Series A-1 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, on a *pari passu* basis, before any payment shall be made to the holders of Series A Preferred or holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series A-1 Preferred Stock by reason of their ownership thereof, an amount per share of Series A-1 Preferred Stock held by such holder equal to the sum of the Series A-1 Original Purchase Price, plus an amount equal to all accrued but unpaid dividends on the Series A-1 Preferred Stock, whether or not declared (the "Series A-1 Preference"). If upon any such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A-1 Preferred Stock the full amount to which they shall be entitled, then the holders of shares of Series A-1 Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on, or with respect to, such shares were paid in full.

(b) After payment in full of the Series A-1 Preference, upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, each holder of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, on a *pari passu* basis, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock by reason of their ownership thereof, an amount per share of Series A Preferred Stock held by such holder equal to the sum of the Series A Original Purchase Price, plus an amount equal to all accrued but unpaid dividends on the Series A Preferred Stock, whether or not declared (the "Series A Preference"). If upon any such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, then the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on, or with respect to, such shares were paid in full.

(c) After the payment in full of the Series A-1 Preference and the Series A Preference pursuant to Sections 3(a) and 3(b) above, upon any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed ratably among the holders of the shares of Common Stock, the Series A Preferred Stock, and the Series A-1 Preferred Stock on an As-Converted Basis and on a pari passu basis, until such time as the holders of Series A Preferred Stock have received an additional amount per share of Series A Preferred Stock equal to the Series A Original Purchase Price and the holders of Series A-1 Preferred Stock have received an additional amount per share of Series A-1 Preferred Stock equal to the Series A-1 Original Purchase Price. Thereafter, the remaining assets and funds of the Corporation available for distribution to its stockholders shall be distributed ratably among the holders of the shares of Common Stock. Notwithstanding the provisions of this Section 3(c) and the previous Sections 3(a) and 3(b), if the amount a holder of Series A Preferred Stock or Series A-1 Preferred Stock would receive with respect to such shares would be greater if such shares were converted to Common Stock immediately prior to such liquidation, dissolution or winding up, the holder of such shares will be paid that higher amount in lieu of payments called for by Sections 3(a) and 3(b).

(d) Unless the Required Holders agree in writing otherwise, any (i) merger, reorganization, consolidation or share transfer which results in the voting securities of the Corporation outstanding immediately prior thereto or the voting securities issued with respect to the voting securities of the Corporation outstanding immediately prior thereto representing immediately thereafter (either by remaining outstanding or by being converted into voting securities of the surviving or acquiring entity) less than a majority of the combined voting power of the voting securities of the Corporation or such surviving or acquiring entity outstanding immediately after such merger, reorganization, consolidation or share transfer, (ii) disposition, transfer, sale or exclusive lease or license of all, or substantially all, of the assets of the Corporation or (iii) issuance or transfer of shares of capital stock of the Corporation, in a single transaction or series of related transactions, representing at least fifty percent (50%) of the voting power of the voting securities of the Corporation, shall be deemed to be a liquidation of the Corporation. A sale (or multiple related sales) of one or more Subsidiaries of the Corporation (whether by way of merger, consolidation, reorganization or sale of all, or substantially all, of the Subsidiaries' assets or securities) which constitutes all, or substantially all, of the consolidated assets of the Corporation shall be deemed a sale of substantially all of the assets of the Corporation for purposes of this Section 3(d). Any one or more of the foregoing transactions described in clauses (i) through (iii) above, as well as in the preceding sentence may collectively be referred to as a "**Deemed Liquidation.**" If applicable, the Corporation shall cause the agreement or plan of merger or consolidation to provide for a rate at which the shares of capital stock of the Corporation are converted into or exchanged for cash, new securities or other property which gives effect to this provision.

(e) The amount deemed distributed to the holders of Series A Preferred Stock and Series A-1 Preferred Stock upon any such merger or consolidation shall be the cash or the value of the property, rights or securities distributed to such holders by the Corporation and/or by the acquiring person, firm or other entity. If the amount to be distributed to the holders of Series A Preferred Stock and Series A-1 Preferred Stock upon any liquidation, dissolution or winding-up (including any transaction treated as such pursuant to Section 3(d) above) shall be other than



cash, the fair market value of the property, rights, or securities distributed to such holders shall be mutually agreed by the Board of Directors of the Corporation and the Required Holders; provided, however, that if such mutual agreement cannot be reached, such fair market value shall be determined by following the procedures set forth in the definition of Appraisal Procedure.

(f) Upon the occurrence of any event described in Section 3(d) above, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the documents governing such transaction shall provide that (i) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3(a), 3(b), and 3(c) above as if the Initial Consideration were the only consideration payable in connection with such transaction and (ii) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3(a), 3(b), and 3(c) above after taking into account the previous payment of the Initial Consideration as part of the same transaction.

4. Voting. Each holder of Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock and/or Series A-1 Preferred Stock held by such holder are convertible (as adjusted from time to time pursuant to Section 5 hereof) as of the record date, at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Holders of Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled to notice of any meeting of stockholders and, except as otherwise provided herein or otherwise required by law, to vote together with the holders of Common Stock as a single class (on an As-Converted Basis).

5. Optional Conversion. The holders of the Series A Preferred Stock and Series A-1 Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Purchase Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" for the Series A Preferred Stock shall initially be the Series A Original Purchase Price of the Series A Preferred Stock. Such Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. Each share of Series A-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A-1 Original Purchase Price by the Series A-1 Conversion Price (as defined below) in effect at the time of conversion. The "Series A-1 Conversion Price" for the Series A-1 Preferred Stock shall initially be the Series A-1 Original Purchase Price of the Series A-1

Preferred Stock. Such Series A-1 Conversion Price, and the rate at which shares of Series A-1 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The term "**Conversion Price**" shall refer to the Series A Conversion Price or the Series A-1 Conversion Price, as applicable.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock or the Series A-1 Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the product of such fraction multiplied by the fair market value of a share of Common Stock, as mutually agreed by the Board of Directors of the Corporation and the Required Holders; provided, however, that if such mutual agreement cannot be reached, such fair market value shall be determined by following the procedures set forth in the definition of Appraisal Procedure. The determination of fractional shares shall be based on the aggregate number of shares of Series A Preferred Stock and/or Series A-1 Preferred Shares surrendered for conversion by any holder of Series A Preferred Stock and/or Series A-1 Preferred Stock and not on the individual shares of Series A Preferred Stock and/or Series A-1 Preferred Stock held by such holder.

(c) Mechanics of Conversion.

(i) In order for a holder of Series A Preferred Stock and/or Series A-1 Preferred Stock to convert shares of Series A Preferred Stock and/or Series A-1 Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock and/or Series A-1 Preferred Stock, at the office of the transfer agent for the Series A Preferred Stock and/or Series A-1 Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock and/or Series A-1 Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation, if the Corporation serves as its own transfer agent) shall be the conversion date ("**Conversion Date**"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Series A Preferred Stock and/or Series A-1 Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share. On the Conversion Date, each holder of record of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock surrendered for conversion shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Series A Preferred Stock and/or Series A-1 Preferred Stock, notwithstanding that the certificates representing such shares of Series A Preferred Stock and/or Series A-1 Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Series A Preferred Stock and/or Series A-1 Preferred Stock, or that

the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(ii) The Corporation shall at all times when the Series A Preferred Stock and/or Series A-1 Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock and Series A-1 Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to allow the conversion of all outstanding Series A Preferred Stock and Series A-1 Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock and/or Series A-1 Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock and/or Series A-1 Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion, and all accrued but unpaid dividends on the Series A Preferred Stock and/or Series A-1 Preferred Stock, whether or not declared, shall be paid in full to the holders of the Series A Preferred Stock and/or Series A-1 Preferred Stock.

(iv) All shares of Series A Preferred Stock and/or Series A-1 Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock and Series A-1 Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue, transfer, stamp and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock pursuant to this Section 5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock and/or Series A-1 Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Section 5(d), the following definitions shall apply:

(A) “**Additional Shares of Common Stock**” shall mean all shares of Common Stock issued (or, pursuant to Section 5(d)(iii) below, deemed to be issued) by the Corporation after the applicable Original Issue Date, other than the following “**Exempted Securities**”:

(I) shares of Common Stock issued or issuable by reason of a dividend, stock split or other subdivision of shares of Common Stock that is covered by Section 5(e) or 5(f) below;

(II) shares of Common Stock issued or issuable upon conversion of shares of Series A Preferred Stock or Series A-1 Preferred Stock;

(III) shares of Common Stock or other securities convertible into shares of Common Stock issued or issuable upon the conversion of any debenture, warrant, option or other convertible security outstanding as of the date of the filing of this Certificate;

(IV) shares of Common Stock issued in connection with a bona fide business acquisition by the Corporation, whether by merger, consolidation, purchase of assets, exchange of stock or otherwise;

(V) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment lease or real property lease transaction approved by the Board; and

(VI) shares of Common Stock either issued in the form of restricted stock awards or options exercisable for Common Stock (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), issued or issuable to officers, directors, consultants and employees of the Corporation pursuant to an equity incentive plan approved by the Board, including the unanimous approval of the Series A-1 Directors.

(B) “**Convertible Securities**” shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(C) “**Option**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(ii) No Adjustment of Conversion Price. No adjustment pursuant to Section 5(d)(iv) in the Conversion Price of the Series A Preferred Stock or Series A-1 Preferred Stock shall be made (a) unless the consideration per share (determined pursuant to Section 5(d)(v) below) for an Additional Share of Common Stock issued or deemed to be issued by the

Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Shares, or (b) if prior to or within sixty (60) days subsequent to such issuance, the Corporation receives written notice from the Required Holders, agreeing that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock; provided, however, that such waiver shall not apply in an adversely different manner to the Series A Preferred Stock or Series A-1 Preferred Stock without the approval of a majority of the voting power of the then outstanding Series A Preferred Stock and/or Series A-1 Preferred Stock, as applicable, as determined pursuant to Section 4 above. Any such waivers shall bind all future holders of shares of such series of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

If the Corporation at any time, or from time to time after the applicable Original Issue Date, shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 5(d)(v) below) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) Upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(I) In the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(II) In the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 5(d)(v) below) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not been exercised or converted prior to such change being made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (1) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date) to increase the number of shares issuable thereunder or decrease the consideration to be paid upon exercise or conversion thereof, then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Section 5(d)(iii) shall apply.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(d)(iii) above, but excluding shares issued as a stock split or combination as provided in Section 5(e) below, or upon a dividend or distribution as provided in

Section 5(f) below), without consideration or for a consideration per share less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to the lowest price per share of the Additional Shares of Common Stock so issued and/or deemed to be issued.

(v) Determination of Consideration. For purposes of this Section 5(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors, or if requested by the Required Holders, by agreement of the Board of Directors and the Required Holders, and if the Board of Directors and the Required Holders do not agree on such fair market value, in accordance with the procedures set forth in the definition of Appraisal Procedure; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5(d)(iii) above, relating to Options and Convertible Securities, shall be determined by dividing:

(I) the total amount, if any, received by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a potential subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time, or from time to time, after the Original Issue Date, combine the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective,

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable solely in additional shares of Common Stock, then and in each such event the Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(g) Adjustment for Reclassification, Exchange, or Substitution. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(h) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all, or substantially all, of the assets of the Corporation to another corporation not deemed to be a



liquidation of the Corporation pursuant to Section 3(c) above, each share of Preferred Stock, if any, remaining outstanding after such consolidation, merger or sale shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment shall be made in the application of the provisions in this Section 5 set forth with respect to the rights and interest thereafter of the holders of such Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly equivalent a manner as may be practicable as before the consolidation or merger. If any event occurs of the type contemplated by the provisions of this Section 5(d) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Corporation's Board of Directors shall make an appropriate reduction in the Conversion Price so as to protect the rights of the holders of the Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock and/or Series A-1 Preferred Stock, as applicable, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of such Preferred Stock.

(j) Notice of Record Date. In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Preferred Stock, and shall cause to be mailed to the holders of the Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the date specified in (A) below or twenty days before the date specified in (B) below, a notice stating:

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

6. Mandatory Conversion.

(a) Upon (i) the vote of the Required Holders of the Series A Preferred Stock or (ii) the closing of a Qualified Public Offering (the earlier of clause (i) or (ii) the "**Series A Mandatory Conversion Date**"), all outstanding shares of Series A Preferred Stock shall be automatically converted into shares of Common Stock into which such Series A Preferred Stock is convertible pursuant to Section 5 above. Upon (1) the vote of the Required Holders of the Series A-1 Preferred Stock or (ii) the closing of a Qualified Public Offering (the earlier of clause (i) or (ii) the "**Series A-1 Mandatory Conversion Date**"), all outstanding shares of Series A-1 Preferred Stock shall be automatically converted into shares of Common Stock into which such Series A-1 Preferred Stock is convertible pursuant to Section 5 above. The Series A Mandatory Conversion Date and the Series A-1 Mandatory Conversion Date are sometimes referred to herein, as applicable, as the "**Mandatory Conversion Date**").

(b) The Corporation shall give all holders of record of shares of Preferred Stock to be converted pursuant to this Section 6 written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock, pursuant to this Section 6. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock to be converted pursuant to this Section 6 shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 6. On the Mandatory Conversion Date, all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or

instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock to be converted pursuant to this Section 6, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 5(b) above in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. On the Mandatory Conversion Date, each holder of record or shares of Preferred Stock to be converted pursuant to this Section 6 shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Preferred Stock, notwithstanding that the certificates representing such shares of Preferred Stock to be converted pursuant to this Section 6 shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(c) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized Preferred Stock accordingly.

#### 7. Protective Covenants.

(a) For so long as there are any shares of Series A-1 Preferred Stock issued and outstanding, the Corporation shall not, and shall not permit any Subsidiary to, without the prior written consent of the Required Holders of the Series A-1 Preferred Stock voting separately as a single class, whether by amendment of the Corporation's Certificate of Incorporation, reclassification, merger, consolidation, reorganization or otherwise;

(i) alter, amend or waive the Corporation's Certificate of Incorporation or Bylaws in a manner adverse to the Series A Preferred Stock or the Series A-1 Preferred Stock;

(ii) authorize, declare or pay any dividend on any share of the capital stock of the Corporation or any Subsidiary, other than the authorization and payment of dividends pursuant to Section 2(a) above;

(iii) redeem, purchase or otherwise acquire for value any share or shares of the capital stock of the Corporation or any Subsidiary, except for (i) repurchases of Common Stock of the Corporation from employees pursuant to contractual call rights or rights of first refusal in which all of the capital stock of the Corporation held by such employee(s) is redeemed at a price no greater than the lesser of original purchase price for such shares and the

fair market value of such shares as of the date of such redemption, and (ii) redemption of the Series A Preferred Stock and the Series A-1 Preferred Stock pursuant to Section 9 below;

(iv) create or authorize the creation of any debt security other than equipment leases or bank lines of credit, unless such debt security has received the prior approval of the Board, including the approval of the Series A-1 Directors;

(v) liquidate, dissolve or wind-up the Corporation;

(vi) permit the authorized number of directors on the Board of Directors of the Corporation to be other than five (5);

(vii) merge with, or into, or consolidate with, any other corporation, whether or not the Corporation or a Subsidiary is the surviving corporation;

(viii) dispose, transfer, sell or exclusively lease or license all, or substantially all, of its properties or assets or all, or substantially all, of any Subsidiary's properties or assets;

(ix) acquire or make an investment in any other Person that is not a wholly-owned subsidiary;

(x) create or authorize the creation of or issue or obligate itself to issue shares of any security convertible into or exercisable for any equity security having rights, preferences or privileges senior to or on parity with the Series A-1 Preferred Stock;

(xi) increase the authorized number of shares of Series A-1 Preferred or any other class or series of capital stock unless it ranks junior to the Series A-1 Preferred Stock;

(xii) reclassify, alter or amend any existing security that is junior to or on parity with the Series A-1 Preferred Stock if such reclassification, alteration or amendment would render such other security senior to or on parity with the Series A-1 Preferred Stock; or

(xiii) create any Subsidiaries other than a Subsidiary in which the Corporation or a Subsidiary is the sole record and beneficial holder of all the equity interests, dispose of any subsidiary stock or dispose of all, or substantially all, of any subsidiary assets.

8. Waiver. Except as otherwise required by law or this Certificate of Incorporation, without creating any additional consent rights not otherwise provided herein, (A) the Required Holders of the Series A Preferred Stock may waive, by delivery of written notice to the Corporation, any of the rights, preferences or privileges relating to the Series A Preferred Stock hereunder, either prospectively or retrospectively and (B) the Required Holders of the Series A-1 Preferred Stock may waive, by delivery of written notice to the Corporation, any of the rights, preferences or privileges relating to the Series A-1 Preferred Stock hereunder, either prospectively or retrospectively.

9. Redemption. Shares of Series A Preferred Stock and Series A-1 Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to

the Series A Original Issue Price or the Series A-1 Original Issue Price, as applicable, in each case plus all declared but unpaid dividends thereon (the "Redemption Price"), in three annual installments commencing not more than 60 days after receipt by the Corporation at any time on or after May [●], 2015, from the Required Holders, of written notice requesting redemption of all shares of Series A Preferred Stock and/or Series A-1 Preferred Stock. The date of each such installment shall be referred to as a "Redemption Date". On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock owned by each holder, that number of outstanding shares of Series A Preferred Stock and/or Series A-1 Preferred Stock determined by dividing (i) the total number of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of Series A Preferred Stock and Series A-1 Preferred Stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such share; and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(a) Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the "Redemption Notice") to each holder of record of Series A Preferred Stock and/or Series A-1 Preferred Stock, as applicable, not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

(i) the number of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice:

(ii) the Redemption Date and the Redemption Price;

(iii) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 5(a)); and

(iv) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock and/or Series A-1 Preferred Stock to be redeemed,

(b) If the Corporation receives, on or prior to the 20th day after the date of delivery of the Redemption Notice to a holder of Series A Preferred Stock and/or Series A-1 Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 9, then the shares of Series A Preferred Stock and/or Series A-1 Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "Excluded Shares." Excluded Shares shall not be redeemed or redeemable pursuant to this Section 9, whether on such Redemption Date or thereafter.

(c) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 5, shall surrender the certificate or certificates representing such shares (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 Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series A Preferred Stock and/or Series A-1 Preferred Stock represented by a certificate are redeemed, one or more new certificates representing the unredeemed shares of Series A Preferred Stock and/or Series A-1 Preferred Stock, as applicable, shall promptly be issued to such holder.

(d) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if, on the applicable Redemption Date, the Redemption Price payable upon redemption of the shares of Series A Preferred Stock and/or Series A-1 Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series A Preferred Stock and/or Series A-1 Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series A Preferred Stock and/or Series A-1 Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

10. Definitions. The following terms shall have the following respective meanings:

“**Appraisal Procedure**” shall mean the following procedure to determine fair market value of any security or other property (in either case, the “**valuation amount**”). If the Required Holders and the Board of Directors are not able to agree on the valuation amount within a reasonable period of time (not to exceed twenty (20) days), the valuation amount shall be determined by an investment banking firm of national recognition, which firm shall be unaffiliated with each of the Corporation and Phisic Ventures and shall be reasonably acceptable to the Board of Directors and the Required Holders. If the Board of Directors and the Required Holders are unable to agree upon an acceptable investment banking firm within ten (10) days after the date either party proposed that one be selected, the investment banking firm will be selected by an arbitrator located in San Francisco, California, selected by the American Arbitration Association (or if such organization ceases to exist, the arbitrator shall be chosen by a court of competent jurisdiction). The arbitrator shall select the investment banking firm (within ten (10) days of his or her appointment) from a list, jointly prepared by the Required Holders and the Board of Directors, of not more than six investment banking firms of national standing in the United States, of which no more than three may be named by the Board of Directors and no more than three may be named by the Required Holders. The arbitrator may consider, within the ten-

day period allotted, arguments from the parties regarding which investment banking firm to choose, but the selection by the arbitrator shall be made in its sole discretion from the list of six. The Board of Directors and the Required Holders shall submit their respective valuations and other relevant data to the investment banking firm, and the investment banking firm shall as soon as practicable thereafter make its own determination of the valuation amount. The final valuation amount for purposes hereof shall be the average of the two valuation amounts closest together, as determined by the investment banking firm, from among the valuation amounts submitted by the Corporation and the Required Holders and the valuation amount calculated by the investment banking firm. The determination of the final valuation amount by such investment banking firm shall be final and binding upon the parties. The Corporation shall pay the fees and expenses of the investment banking firm and arbitrator (if any) used to determine the valuation amount. If required by any such investment banking firm or arbitrator, the Corporation shall execute a retainer and engagement letter containing reasonable terms and conditions, including, without limitation, customary provisions concerning the rights of indemnification and contribution by the Corporation in favor of such investment banking firm or arbitrator and its officers, directors, partners, employees, agents and affiliates. If the valuation amount is for Common Stock of the Corporation, the valuation amount shall not include a discount for minority ownership or illiquidity or a control premium.

**"As-Converted Basis"** shall mean, for the purpose of determining the number of shares of Common Stock outstanding, a basis of calculation which takes into account (a) the number of shares of Common Stock actually issued and outstanding at the time of such determination, and (b) the number of shares of Common Stock that is then issuable upon the exercise or conversion of all outstanding securities or rights convertible into or exercisable for Common Stock.

**"Original Issue Date"** shall mean, with respect to the Series A Preferred Stock, the date on which a share of Series A Preferred Stock was first issued, and, with respect to the Series A-1 Preferred Stock, the date on which a share of Series A-1 Preferred Stock was first issued.

**"Person"** shall mean, without limitation, an individual, a partnership, a corporation, an association, a joint stock corporation, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental authority.

**"Physic Ventures"** shall mean Physic Ventures, L.P.

**"Qualified Public Offering"** shall mean the sale of shares of Common Stock, at a price of at least 500% of the Series A-1 Original Purchase Price per share (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in aggregate gross offering proceeds to the Corporation (net of the underwriting discounts or commissions and offering expenses) at least Fifty Million Dollars (\$50,000,000).

**"Required Holders"** means the holders of at least sixty-six percent (66%) of the then outstanding shares of Series A Preferred Stock with respect to matters affecting the Series A Preferred Stock or the holders of at least sixty-six percent (66%) of the then outstanding shares of Series A-1 Preferred Stock with respect to matters affecting the Series A-1 Preferred Stock, as

applicable. Should the matter being voted upon affect both the Series A Preferred Stock and the Series A-1 Preferred Stock, then "**Required Holders**" shall mean the holders of at least sixty-six percent (66%) of the then outstanding shares of the Series A Preferred Stock and the Series A-1 Preferred Stock, voting together, as a single class, on an As-Converted Basis.

"**Series A Original Purchase Price**" shall be \$0.10 per share of Series A Preferred Stock.

"**Series A-1 Original Purchase Price**" shall be \$0.75 per share of Series A-1 Preferred Stock.

"**Subsidiary**" shall mean any corporation or trust of which the Corporation directly or indirectly owns at the time 50% or more of the outstanding shares that represent either 50% of the voting power, 50% of the economic power, or control of the board of directors of such corporation or trust, other than directors' qualifying shares.

FIFTH. The Corporation is to have perpetual existence.

SIXTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend, or repeal the bylaws of the Corporation, subject to the right of the stockholders set forth herein, including, without limitation, the right of the stockholders entitled to vote with respect thereto to alter and repeal the Bylaws adopted by the Board of Directors.

B. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the Bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

SEVENTH. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholders thereof, or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to reorganization of the Corporation as a consequence of



such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

EIGHTH. To the maximum extent permitted from time to time under the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, other than those officers, directors or stockholders who are employees of the Corporation. No amendment or repeal of this Article Eighth shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director, or stockholder becomes aware prior to such amendment or repeal.

NINTH. A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability is determined. No amendment or repeal of this Article Ninth shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal, whether or not any claim with respect to such acts or omissions has been made prior to any such amendment or repeal.

TENTH. The Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a director or officer of the Corporation or while a director or officer is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require the Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding or claim initiated by or on behalf of such person or any counterclaim against the Corporation initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification rights arising under any bylaw, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Article Tenth shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Any amendment or repeal of the foregoing provisions of this Article Tenth shall not adversely affect any right or protection of a director or officer of the Corporation with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal whether or not any claim with respect to such acts or omissions has been made prior to the date of any such amendment or repeal.

ELEVENTH. If at any time the Corporation shall have a class of stock registered pursuant to the provisions of the Securities Exchange Act of 1934, for so long as such class is so registered, any action by the stockholders of such class must be taken at an annual or special meeting of stockholders and may not be taken by written consent.

TWELFTH. The Corporation hereby elects not to be governed by Section 203 of the General Corporation Law of the State of Delaware.

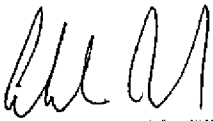
THIRTEENTH. Notwithstanding any provision of law, the Corporation may, by contract, grant to some or all of the security holders of the Corporation preemptive rights to acquire stock of the Corporation, but no stockholders shall have any preemptive rights except as specifically granted.

FOURTEENTH. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Second Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation."

*[Signature Pages Immediately Follow.]*

IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by its President this 16th day of May, 2010.

**TUGBOAT, INC.**

By:   
Name: Alastair Dorward  
Title: President and Chief Executive Officer

**SIGNATURE PAGE TO THE SERIES A-1 SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**