

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM314003

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Alter Eco Americas Inc.		07/30/2013	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Alter Eco Americas PBC		
Street Address:	2339 Third Street, Suite 70		
City:	San Francisco		
State/Country:	CALIFORNIA		
Postal Code:	94107		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 3			
Property Type	Number	Word Mark	
Serial Number:	85845238	VELVET TRUFFLE CHOCOLATE	
Serial Number:	85845290	DARK VELVET	
Serial Number:	85845306	DARK BLACKOUT	
CORRESPONDENCE DATA			
Fax Number:	5108341928		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	510-834-6600		
Email:	tmdocket@wendel.com		
Correspondent Name:	Wendel, Rosen, Black & Dean LLP		
Address Line 1:	1111 Broadway, 24th Floor		
Address Line 4:	Oakland, CALIFORNIA 94607		
ATTORNEY DOCKET NUMBER:	014093.0003		
NAME OF SUBMITTER:	Eugene M. Pak		
SIGNATURE:	/Eugene M. Pak/		
DATE SIGNED:	08/14/2014		
Total Attachments: 24			
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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 "ALTER ECO AMERICAS INC.", CHANGING ITS NAME FROM "ALTER ECO AMERICAS INC." TO "ALTER ECO AMERICAS PBC", FILED IN THIS OFFICE ON THE FIRST DAY OF AUGUST, A.D. 2013, AT 8 O'CLOCK A.M.

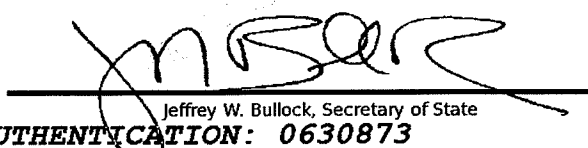
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



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You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 0630873

DATE: 08-01-13

TRADEMARK
REEL: 005343 FRAME: 0836

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ALTER ECO AMERICAS INC.**

Alter Eco Americas Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that:

FIRST: The name of the Corporation is Alter Eco Americas Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 19, 2004. A Certificate of the Designations, Powers, Preferences and Rights of the Series A Preferred Stock was filed with the Secretary of State of the State of Delaware on March 19, 2009. An Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 1, 2010. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on July 17, 2012.

SECOND: By unanimous written consent of the Board of Directors of the Corporation, filed with the minutes of the Corporation, resolutions were duly adopted setting forth the proposed amendment and restatement of the Certificate of Incorporation and declaring said amendment and restatement to be advisable. The resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate be amended and restated in its entirety in the form of the Amended and Restated Certificate of Incorporation of Alter Eco Americas PBC ("Restated Certificate"), attached hereto as Exhibit A, incorporated herein by this reference and made a part hereof.

THIRD: Thereafter, pursuant to resolution of its Board of Directors, the stockholders of the Corporation took action by executing a written consent in lieu of a meeting in accordance with Section 228 and Section 363(a) of the General Corporation Law of the State of Delaware to approve such amendment and restatement. The number of shares of stock approving such amendment and restatement equaled or exceeded the vote required, such required vote being more than 90% of the outstanding stock, more than 90% of the outstanding Common Stock, more than 90% of the outstanding Series A Convertible Preferred Stock, and more than 90% of the outstanding Series B Convertible Preferred Stock.

FOURTH: Said amendment and restatement was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware. This Amended and Restated Certificate of Incorporation amends and restates the provisions of the Certificate of Incorporation of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer, this 30th day of July, 2013.

ALTER ECO AMERICAS INC.

By: 
Edouard Rollet, President

EXHIBIT A
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ALTER ECO AMERICAS PBC, A PUBLIC BENEFIT CORPORATION

ARTICLE I

The name of the Corporation is Alter Eco Americas PBC (this "Corporation"). This Corporation is a Public Benefit Corporation organized under Subchapter XV of the Delaware General Corporation Law.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 615 South Dupont Highway, City of Dover, County of Kent, Delaware 19901. The Corporation's registered agent at that address is National Corporate Research, Ltd.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware. Additionally, the Corporation shall have a purpose of promoting each of the following specific public benefit purposes set forth below.

A. Material Positive Impact on Environment and Society. The Corporation shall have a specific public benefit purpose of creating material positive impact on society and the environment, taken as a whole, as assessed against a third party standard, from the business and operations of the Corporation.

B. Transparency. Annually the Corporation shall deliver to its stockholders and make available to the public on its website, or if it does not have a website, upon request, a public benefit statement prepared in accordance with Section 366 of the General Corporation Law of the State of Delaware. This statement shall be prepared in accordance with a third party standard applied consistently with any application of that standard in prior statements or accompanied by an explanation of the reasons for any inconsistent application. A "third-party standard" means a standard for defining, reporting, and assessing overall corporate social and environmental performance to which all of the following apply:

1. The standard is a comprehensive assessment of the impact of the business and the business's operations upon:

(a) The employees and workforce of the Corporation and its subsidiaries and suppliers;

(b) The interests of customers of the Corporation as beneficiaries of the general or specific public benefit purposes of the Corporation;

(c) Community and societal considerations, including those of any community in which offices or facilities of the Corporation or its subsidiaries or suppliers are located; and

(d) The local and global environment.

2. The standard is developed by an entity that has no material financial relationship with the Corporation or any of its subsidiaries and that satisfies both of the following requirements:

(a) Not more than one-third of the members of the governing body of the entity are representatives of any of the following:

(i) Associations of businesses operating in a specific industry, the performance of whose members is measured by the standard.

(ii) Businesses from a specific industry or an association of businesses in that industry.

(iii) Businesses whose performance is assessed against the standard.

(b) The entity is not materially financed by an association or business described in subparagraph (A).

3. The standard is developed by an entity that does both of the following:

(a) Accesses necessary and appropriate expertise to assess overall corporate social and environmental performance.

(b) Uses a balanced multi-stakeholder approach, including a public comment period of at least 30 days to develop the standard.

4. All of the following information regarding the standard is publicly available:

(a) The criteria considered when measuring the overall social and environmental performance of a business.

(b) The relative weightings assigned to the criteria described in subparagraph (A).

(c) The identity of the directors, officers, any material owners, and the governing body of the entity that developed, and controls revisions to, the standard.

(d) The process by which revisions to the standard and changes to the membership of the governing body described in subparagraph (C) are made.

An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

C. Fair Trade. All products sold by the Corporation shall be Fair Trade Certified, provided that such certification is available for a given product.

D. Organic. The Corporation aspires to sell only products that are certified organic, provided that it does not negatively impact the Corporation's priority for selling products that are Fair Trade Certified.

E. Climate Change. The Corporation shall offset 100% of the greenhouse gas emissions associated with its operations and the production and distribution of its products through the purchase of carbon offsets and other carbon reduction strategies.

ARTICLE IV

The Corporation is to have perpetual existence.

ARTICLE V

A. Classes and Number of Shares.

This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Thirty Seven Million One Hundred Eighty One Thousand Nine Hundred Fifty Seven (37,181,957) shares. Twenty One Million Nine Hundred Forty Four Thousand Nine Hundred Eleven (21,944,911) shares shall be Common Stock, each with a par value of One Ten-Thousandth of One Dollar (\$0.0001) per share (the "Common Stock"), and Fifteen Million Two Hundred Thirty Seven Thousand Forty Six (15,237,046) shares shall be Preferred Stock, each with a par value of One Ten-Thousandth of One Dollar (\$0.0001) per share (the "Preferred Stock").

B. Rights, Preferences and Restrictions of Preferred Stock.

Eight Million Eight Hundred Fifty Seven Thousand One Hundred Forty (8,857,140) shares of Preferred Stock shall be designated "Series A Convertible Preferred Stock", and Six Million Three Hundred Seventy Nine Thousand Nine Hundred Six (6,379,906) shares of Preferred Stock shall be designated "Series B Convertible Preferred Stock". The rights, preferences, privileges and restrictions granted to and imposed on the Series A Convertible Preferred Stock and the Series B Convertible Preferred Stock are set forth below in this Article V(B).

1. **DEFINITIONS.** For purposes of this Article, the following definitions shall apply:

(a) "Affiliate" shall mean a Person who, directly or indirectly, controls, is controlled by or is under common control with another Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

- (b) "Board" shall mean the board of directors of the Corporation.
- (c) "Corporation" shall mean Alter Eco Americas Inc., a Delaware corporation.
- (d) "Common Stock" shall mean the common stock, par value \$0.0001 per share, of the Corporation.
- (e) "Common Stock Dividend" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.
- (f) "National Securities Market" shall mean a national securities exchange, as defined in the Securities Exchange Act of 1934, as amended, or The Nasdaq Stock Market.
- (g) "Original Issue Date" shall mean, with respect to any shares of Series A Preferred Stock, the date on which such share of Series A Preferred Stock was issued by the Corporation, and with respect to any shares of Series B Preferred Stock, the date on which such share of Series B Preferred Stock was issued by the Corporation.
- (h) "Original Issue Price" shall mean \$0.5250 per share for the Series A Preferred Stock and \$0.7000 per share for the Series B Preferred Stock, subject to the appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock or Series B Preferred Stock, as applicable.
- (i) "Person" shall mean individual, firm, corporation, partnership, association, limited liability company, trust or any other entity.
- (j) "Series A Directors" shall mean the directors elected by the holders of Series A Preferred Stock voting separately as a class pursuant to **Section 4(b)** below.
- (k) "Series A Preferred Stock" shall mean the Series A Convertible Preferred Stock, par value \$0.0001 per share, of the Corporation.
- (l) "Series B Preferred Stock" shall mean the Series B Convertible Preferred Stock, par value \$0.0001 per share, of the Corporation.
- (m) "Subsidiary" shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Corporation or by one or more of such subsidiary corporations.

2. DIVIDEND RIGHTS.

(a) **Fixed Dividends.** From and after the date of the issuance of any shares of Series A Preferred Stock or Series B Preferred Stock, dividends at the rate per annum of six percent (6%) of the Original Issue Price per share for such Series A Preferred Stock or Series B Preferred shall accrue on such shares of Series A Preferred Stock and Series B Preferred (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock or Series B Preferred Stock) (the "**Fixed Dividends**"). Fixed Dividends shall accrue from day to day, whether or not

declared, and shall be cumulative; provided however, that except as set forth in the following sentence of this Section 2, in Subsection 3(a) and Section 6, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series A Preferred Stock and the Series B Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock and Series B Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate Fixed Dividends then accrued on such share of Series A Preferred Stock or Series B Preferred Stock and not previously paid and (ii) in the case of a dividend on Common Stock, that dividend per share of Series A Preferred Stock and Series B Preferred Stock as would equal the product of (1) the dividend payable on Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock or Series B Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend.

(b) **Other Distributions.** In the event the Corporation shall declare a distribution (other than any dividends described in Section 2(a) above and any distribution described in Section 3, below) payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash) or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Series A Preferred Stock and the Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though such holders were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Series A Preferred Stock and Series B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(c) **Non-Cash Dividends.** Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

3. LIQUIDATION RIGHTS. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders (the "Available Funds and Assets") shall be distributed to stockholders in the following manner:

(a) **Liquidation Preferences.** The holders of each share of Series A Preferred Stock and Series B Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to the Original Issue Price (as adjusted for stock splits, stock dividends, and the like) for the Series A Preferred Stock or the Series B Preferred Stock, as applicable, plus all accrued but unpaid dividends thereon, including without limitation, the Fixed Dividends (as adjusted for stock splits, stock dividends, and the like); provided, however, that for purposes of this Section 3(a) only, "Original Issue Price" for the Series B Preferred Stock shall be \$0.6200 per share for the shares of Series B Preferred Stock acquired through conversion of 2011 Bridge Notes (as defined in that certain Investment

Agreement dated on or around July 17, 2012 ("Investment Agreement") pursuant to which the Series B Preferred Stock is being issued by the Corporation), and \$0.7000 per share for the shares of Series B Preferred Stock acquired through purchase for cash pursuant to said Investment Agreement, subject to the appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization. If upon any liquidation, dissolution or winding up of the Corporation the Available Funds and Assets shall be insufficient to pay the holders of the Series A Preferred Stock and the Series B Preferred Stock their full preferential amounts described in this subsection, then all the remaining Available Funds and Assets shall be distributed ratably among the holders of the then outstanding Series A Preferred Stock and Series B Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Section 3(a) above, the holders of Series A Preferred Stock, the holders of Series B Preferred Stock, and the holders of Common Stock shall receive any remaining Available Funds and Assets on a pro rata basis, based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Amended and Restated Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation.

(c) **Merger or Sale of Assets.** A (i) consolidation or merger of the Corporation with or into any other corporation or corporations in which the holders of the Corporation's outstanding shares immediately before such consolidation or merger do not, immediately after such consolidation or merger, retain stock representing a majority of the voting power of (1) the surviving corporation of such consolidation or merger, or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 3(c), all shares of Common Stock issuable upon exercise of Rights, Options or Convertible Securities (as defined in Section 5(g)(ii)(F) below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged), or (ii) a sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, of all or substantially all of the assets of the Corporation, shall each be deemed to be a liquidation, dissolution or winding up of the Corporation as those terms are used in this Section 3; provided, however, that a transaction shall not be deemed to be a liquidation, dissolution or winding up of the Corporation if its sole purpose is to change the state of this Corporation's incorporation.

(d) **Non-Cash Consideration.** If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined by the Board, except that any securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) if the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value shall be deemed

to be the average of the dosing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and

(ii) if actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the closing of such merger, consolidation or sale; and

(iii) if there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board.

4. VOTING RIGHTS.

(a) **Voting Other than for Directors.** Except as required by law and in Section 4(b) of this Article V(B), each holder of shares of Series A Preferred Stock or Series B Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Series A Preferred Stock or Series B Preferred Stock could be converted pursuant to the provisions of Section 5 below at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited. Each holder of Series A Preferred Stock or Series B Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Series A Preferred Stock, the holders of Series B Preferred Stock, and the holders of Common Stock shall vote together and not as separate classes. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Series A Preferred Stock and Series B Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (one-half and greater being rounded upward).

(b) **Voting for Directors.** The Board of Directors shall consist of seven (7) members. With respect to the election of members of the Board of Directors:

(i) For so long as at least twenty percent (20%) of the authorized shares of Preferred Stock remain issued and outstanding, three (3) persons shall be designated by the holders of Preferred Stock, one of which shall be designated by Fiore Capital (Alter Eco) Limited Partnership, a limited partnership formed under the laws of the Province of British Columbia ("Fiore"), provided Fiore still owns at least twenty percent (20%) of the authorized shares of the Series B Preferred Stock, in which case the other two (2) persons designated pursuant to this Section 4(b)(i) shall be designated by the holders of the Series A Preferred Stock, voting as a single class.

(ii) If at least ten percent (10%) but less than twenty percent (20%) of the authorized shares of Preferred Stock remain issued and outstanding, two (2) persons shall be designated by the holders of Preferred Stock, one of which shall be designated by Fiore, provided Fiore still owns at least forty percent (40%) of the authorized Series B Preferred Stock,

in which case the other person designated pursuant to this Section 4(b)(ii) shall be designated by the holders of the Series A Preferred Stock, voting as a single class.

(iii) If less than ten percent (10%) of all authorized Preferred Stock is issued and outstanding, the holders of the Preferred Stock, voting separately as a class, shall be entitled to elect one (1) of the Corporation's seven (7) authorized directors.

(iv) The holders of Common Stock, voting separately as a class, shall be entitled to elect one (1) of the seven (7) authorized directors.

(v) An additional two (2) persons, one of whom shall be designated by Mathieu Senard and one of whom shall be designated by Edouard Rollet, the co-founders of the Company; provided, however, that each co-founder will be entitled to designate one director only if either (i) such co-founder is still employed by Company in the capacity of a manager or more senior position (including without limitation, as a Director of Marketing and/or Sales), or (ii) the number of shares he owns constitutes at least a two percent (2%) interest in the Company, on a fully diluted basis (assuming the exercise of all options that have been granted to any person and the conversion of any convertible securities of the Company, but excluding the exercise of any warrants).

(vi) The balance of the members of the Board of Directors (including in the event that any of clauses (i) through (v) above shall not be applicable) shall be approved by the holders of Common Stock, the holders of Series A Preferred Stock, and the holders of Series B Preferred Stock on an as-converted basis, voting together; provided that one (1) such member of the Board is not an Affiliate of the Corporation, or of any holder of Preferred Stock, or of Edouard Rollet, or of Mathieu Senard, or of any holder of Common Stock.

(c) **Failure to Designate a Board Member.** In the absence of any designation from the persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if still eligible to serve as provided herein.

(d) **Removal of Board Members.** Each Shareholder also agrees to vote, or cause to be voted, all Shares owned by such Shareholder, or over which such Shareholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that:

(i) no director elected pursuant to Sections 4(b)(i) to (vi) of this Amended and Restated Certificate of Incorporation may be removed from office other than for cause unless (X) such removal is directed or approved by the affirmative vote of the Person, or of the holders of at least a majority of the shares of Common Stock or Series A Preferred Stock or Series B Preferred Stock, as applicable, entitled under said sections to designate that director, or (Y) the Person(s) originally entitled to designate or approve such director or occupy such Board seat pursuant to said sections is no longer so entitled to designate or approve such director or occupy such Board seat;

(ii) any vacancies created by the resignation, removal or death of a director elected pursuant to Sections 4(b)(i) to (vi) shall be filled pursuant to the provisions of Section 4(b); and

(iii) Upon the request of any party entitled to designate a director as provided in Sections 4(b)(i) to (vi) to remove such director, such director shall be removed.

(e) **Written Consents.** All Shareholders agree to execute any written consents required to perform the obligations of this Agreement, and the Corporation agrees at the request of any party entitled to designate directors to call a special meeting of Shareholders for the purpose of electing directors.

(f) **No Liability for Election of Recommended Directors.** No Shareholder, nor any Affiliate of any Shareholder, shall have any liability as a result of designating a Person for election as a director for any act or omission by such designated Person in his or her capacity as a director of the Corporation, nor shall any Shareholder have any liability as a result of voting for any such designee in accordance with the provisions of this Amended and Restated Certificate of Incorporation.

(g) **Protective Provisions.** In addition to any other vote or consent required herein or by law, this Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock and the holders of at least a majority of the then outstanding Series B Preferred Stock:

(i) for so long as at least ten percent (10%) of the Series A Preferred Stock and at least ten percent (10%) of the Series B Preferred Stock remains outstanding, affect any significant change of the Corporation's business from that currently conducted or contemplated by the Corporation pursuant to the Corporation's March 1, 2012 budget and business plan;

(ii) for so long as any Series A Preferred Stock remains outstanding, alter, amend, or modify in any adverse manner the rights, preferences and/or privileges of the holders of Series A Preferred Stock; or

(iii) for so long as any Series B Preferred Stock remains outstanding, alter, amend, or modify in any adverse manner the rights, preferences and/or privileges of the holders of Series B Preferred Stock.

5. **CONVERSION RIGHTS.** The outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall be convertible into Common Stock as follows:

(a) **Optional Conversion.**

(i) At the option of the holder thereof, each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible, at any time or 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 in accordance with Section 5(c) below.

(ii) Each holder of Series A Preferred Stock and Series B Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for

the Series A Preferred Stock, Series B Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Series A Preferred Stock and Series B Preferred Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Series A Preferred Stock and Series B Preferred Stock to be converted, and the Person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(iii) In the event of a notice of redemption of any shares of Series A Preferred Stock and Series B Preferred Stock pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock and Series B Preferred Stock.

(b) **Automatic Conversion.**

(i) Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into fully paid and non-assessable shares of Common Stock, as provided herein: (i) immediately prior to the closing of a firm commitment underwritten public offering (underwritten by an underwriter or underwriters acceptable to the holders of a majority of the then outstanding shares of the Preferred Stock) pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, in which shares of Common Stock are approved for listing on a National Securities Market, covering the offer and sale of Common Stock for the account of the Corporation in which the aggregate public offering price (before deduction of underwriters' discounts and commissions) equals or exceeds \$7,500,000 (a "Qualified Public Offering") and the capitalization of the Corporation (determined by multiplying the number of shares of Common Stock outstanding (including the number of whole shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted)), immediately prior to the Qualified Public Offering, exceeds Fifty Million Dollars (\$50,000,000); or (ii) with respect to the Series A Preferred Stock, upon the Corporation's receipt of the written consent of the holders of not less than sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock to the conversion of all then outstanding Series A Preferred Stock under this Section 5, and with respect to the Series B Preferred Stock, upon the Corporation's receipt of the written consent of the holders of not less than sixty six and two-thirds percent (66 2/3%) of the then outstanding shares of Series B Preferred Stock to the conversion of all then outstanding Series B Preferred Stock under this Section 5.

(ii) Upon the occurrence of any event specified in Section 5(b)(i) above, the outstanding shares of Series A Preferred Stock and Series B Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the

holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock and Series B Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred Stock and Series B Preferred Stock, the holders of Series A Preferred Stock and Series B Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series A Preferred Stock, Series B Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock or Series B Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(c) **Conversion Price.** Each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible in accordance with **Section 5(a)** or **Section 5(b)** above into the number of shares of Common Stock which results from (i) with respect to the Series A Preferred Stock, dividing the Original Issue Price for each such share of Series A Preferred Stock by the conversion price for Series A Preferred Stock that is in effect at the time of conversion, and (ii) with respect to the Series B Preferred Stock, dividing the Original Issue Price for each such share of Series B Preferred Stock by the conversion price for Series B Preferred Stock that is in effect at the time of conversion (each, the "Conversion Price"). The initial Conversion Price for the Series A Preferred Stock shall be the Original Issue Price for the Series A Preferred Stock, and the initial Conversion Price for the Series B Preferred Stock shall be the Original Issue Price for the Series B Preferred Stock. The Conversion Price shall be subject to adjustment from time to time as provided below.

(d) **Adjustment Upon Common Stock Event.** Upon the happening of a Common Stock Event (as hereinafter defined), the Conversion Price of the Series A Preferred Stock and the Series B Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of each such series in effect immediately prior to such Common Stock Event by a fraction, (a) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (b) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price for such series of Preferred Stock. The Conversion Price for the Series A Preferred Stock and the Conversion Price for the Series B Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term "Common Stock Event" shall mean (i) the issue by the Corporation of Additional Shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.

(e) **Adjustments for Other Dividends and Distribution.** If at any time or from time to time after the Original Issue Date of the Series A Preferred Stock or Series B Preferred Stock, as applicable, the Corporation pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Corporation other than shares of Common Stock, then in each such event provision shall be made so that the holders of the Series A Preferred Stock and Series B Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof the amount of securities of the Corporation which they would have received had their Series A Preferred Stock or Series B Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Series A Preferred Stock or Series B Preferred Stock or with respect to such other securities by their terms.

(f) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Original Issue Date of the Series A Preferred Stock or Series B Preferred Stock, as applicable, the Common Stock issuable upon the conversion of the Series A Preferred Stock or Series B Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), then in any such event each holder of Series A Preferred Stock or Series B Preferred Stock, as applicable, shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(g) **Sale of Shares Below Conversion Price.**

(i) **Adjustment Formula.** If at any time or from time to time after the Original Issue Date of the Series A Preferred Stock or Series B Preferred Stock, as applicable, the Corporation issues or sells, or is deemed by the provisions of this Section 5(g) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in Section 5(d), a dividend or distribution as provided in Section 5(e) or a recapitalization, reclassification or other change as provided in Section 5(f), for an Effective Price (as hereinafter defined) that is less than the Conversion Price for the Series A Preferred Stock or Series B Preferred Stock, as applicable, in effect immediately prior to such issue or sale, then, and in each such case, the Conversion Price of the Series A Preferred Stock and the Conversion Price of the Series B Preferred Stock, as applicable, shall be reduced, as of the close of business on the date of such issue or sale, to the price obtained by multiplying such Conversion Price by a fraction:

(A) The numerator of which shall be the sum of (i) the number of Common Stock Equivalents Outstanding (as hereinafter defined) immediately prior to such issue or sale of Additional Shares of Common Stock plus (ii) the quotient obtained by dividing the

Aggregate Consideration Received (as hereinafter defined) by the Corporation for the total number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold) by the Conversion Price of the Series A Preferred Stock or the Series B Preferred Stock, as applicable, in effect immediately prior to such issue or sale; and

(B) The denominator of which shall be the sum of (i) the number of Common Stock Equivalents Outstanding immediately prior to such issue or sale plus (ii) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).

(ii) **Certain Definitions.** For the purpose of making any adjustment required under this Section 5(g):

(A) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation, whether or not subsequently reacquired or retired by the Corporation, other than (i) shares of Common Stock issued or issuable upon conversion of Series A Preferred Stock or Series B Preferred Stock; (ii) shares issued in connection with a public offering in which all of the Series A Preferred Stock and Series B Preferred Stock will be converted; (iii) shares of Common Stock (or options, warrants or rights therefor) issued to employees, officers, or directors of or contractors, consultants or advisers to, the Corporation or any Subsidiary pursuant to stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements that were or at any time are approved by the Board (such number of shares to be calculated net of any repurchases of such shares by the Corporation and net of any such expired or terminated options, warrants or rights and to be proportionally adjusted to reflect any subsequent Common Stock Event); (iv) shares of Common Stock (or options, warrants or rights therefor) issued to vendors, cooperative organizations of suppliers or growers, or non-profit organizations engaged in the promotion of fair trade principles pursuant to stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements if, in each case, the Board, including the Series A Directors and the Series B Director, if any, makes a determination that such shares, options, warrants or rights should be excluded from the definition of "Additional Shares of Common Stock" under this Section 5(g)(ii)(A); (v) shares issued for consideration other than cash pursuant to a merger consideration, acquisition or similar business combination, in each case, as is approved by the Board; (vi) shares issued in connection with stock splits, dividends, or like transactions; (vii) shares issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution, in each case, as is approved by the Board, including the Series A Directors and the Series B Director, if any; and (viii) shares with respect to which the holders of a majority of the outstanding Series A Preferred Stock and a majority of the outstanding Series B Preferred Stock waive their anti-dilution rights.

(B) The "Aggregate Consideration Received" by the Corporation for any issue or sale (or deemed issue or sale) of securities shall (i) to the extent it consists of cash, be computed at the gross amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale and without deduction of any expenses payable by the Corporation; (ii) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board; and (iii) if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as

the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.

(C) "Common Stock Equivalents Outstanding" shall mean the number of shares of Common Stock that is equal to the sum of (i) all shares of Common Stock of the Corporation that are outstanding at the time in question, plus (ii) all shares of Common Stock of the Corporation issuable upon conversion of all shares of Series A Preferred Stock, Series B Preferred Stock, or other Convertible Securities that are outstanding at the time in question, plus (iii) all shares of Common Stock of the Corporation that are issuable upon the exercise of Rights or Options that are outstanding at the time in question assuming the full conversion or exchange into Common Stock of all such Rights or Options that are Rights or Options to purchase or acquire Convertible Securities into or for Common Stock.

(D) "Convertible Securities" shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.

(E) The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have, been issued or sold, by the Corporation under this Section 5(g), into the Aggregate Consideration Received, or deemed to have been received, by the Corporation under this Section 5(g), for the issue of such Additional Shares of Common Stock; and

(F) "Rights or Options" shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

6. REDEMPTION

(a) **Redemption of Series A Preferred Stock.** Shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at the Redemption Price, as defined below, at any time on or after the fifth (5th) anniversary of the Initial Closing, as defined in the Series A Preferred Stock Purchase Agreement between the Corporation and certain purchasers of Series A Preferred Stock dated on or about April 1, 2010, following receipt by the Corporation from one (1) or more holders of outstanding shares of Series A Preferred Stock of written notice requesting redemption (the "Redemption Request") of all shares of Series A Preferred Stock. On the date (the "Redemption Date") that is the later of (x) sixty (60) days after receipt of the Redemption Request or (y) the date that the Redemption Price has been determined, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series A Preferred Stock owned by each holder, all of the outstanding shares of Series A Preferred Stock other than Excluded Shares (as such term is defined in Section 6(e)). The Redemption Price, together with interest on the unpaid balance thereof at ten percent (10%) per year, shall be paid in installments on a quarterly basis over a period determined by the Corporation, but no longer than three (3) years after the Redemption Date, pursuant to promissory note in a form approved in advance by the holders of a majority of the Series A Preferred Stock (such approval not to be unreasonably withheld). If the Corporation does not have sufficient funds legally available to redeem all shares of Series A Preferred Stock to be redeemed on the 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 shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(b) Redemption of Series B Preferred Stock. Shares of Series B Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at the Redemption Price, as defined below, at any time on or after the fifth (5th) anniversary of the Closing, as defined in the Investment Agreement between the Corporation and certain purchasers of Series B Preferred Stock dated on or about the date that this Amended and Restated Certificate of Incorporation is filed with the Delaware Secretary of State, following receipt by the Corporation from one (1) or more holders of outstanding shares of Series B Preferred Stock of written notice requesting redemption (the "Redemption Request") of all shares of Series B Preferred Stock. On the date (the "Redemption Date") that is the later of (x) sixty (60) days after receipt of the Redemption Request or (y) the date that the Redemption Price has been determined, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series B Preferred Stock owned by each holder, all of the outstanding shares of Series B Preferred Stock other than Excluded Shares (as such term is defined in Section 6(e)). The Redemption Price, together with interest on the unpaid balance thereof at ten percent (10%) per year, shall be paid in installments on a quarterly basis over a period determined by the Corporation, but no longer than three (3) years after the Redemption Date, pursuant to promissory note in a form approved in advance by the holders of a majority of the Series B Preferred Stock (such approval not to be unreasonably withheld). If the Corporation does not have sufficient funds legally available to redeem all shares of Series B Preferred Stock to be redeemed on the 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 shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(c) Redemption Price. Upon delivery of a Redemption Request, as defined above, the value (the "Redemption Price") of each share of Preferred Stock subject to redemption shall be determined by appraisal. The Redemption Price shall be the average of two (2) independent appraisals from nationally-recognized third party appraisal firms specializing in company valuations and reasonably acceptable to the holders of a majority of the shares of Series A Preferred Stock (if Series A Preferred Stock is being redeemed) or the holders of a majority of the shares of Series B Preferred Stock (if Series B Preferred Stock is being redeemed), and the Board (excluding the votes of the Series A Directors if Series A Preferred Stock is being redeemed, or the Series B Preferred Director if Series B Preferred Stock is being redeemed). The value of the Series A Preferred Stock or Series B Preferred Stock shall be based on the Corporation's fair market value without application of a liquidity or other discount. All of the books and records of the Corporation shall be made available to the appraisers; provided that the appraisers shall enter into confidentiality agreements reasonably acceptable to the Corporation. The cost of the appraisals shall be borne equally by the Corporation and the holders of (i) the Series A Preferred Stock (if Series A Preferred Stock is being redeemed), or (ii) the Series B Preferred Stock (if Series B Preferred Stock is being redeemed).

(d) **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 or Series B Preferred Stock not less than twenty (20) days prior to the Redemption Date. Each Redemption Notice shall state:

(i) the number of shares of Series A Preferred Stock or Series B 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 or Series B Preferred Stock to be redeemed.

(e) **Excluded Shares.** If the Corporation receives, on or prior to the tenth (10th) day after the date of delivery of the Redemption Notice to a holder of Series A Preferred Stock or Series B Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 6, then the shares of Series A Preferred Stock or Series B 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 6, whether on such Redemption Date or thereafter.

(f) **Surrender of Certificates; Payment.** On or before the applicable Redemption Date, each holder of shares of Series A Preferred Stock or Series B 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(a), 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 first installments of 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 or Series B Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series A Preferred Stock or Series B Preferred Stock shall promptly be issued to such holder.

(g) **Rights Subsequent to Redemption.** If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the first installment of the Redemption Price payable upon redemption of the shares of Series A Preferred Stock or Series B 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 or Series B Preferred Stock so called for redemption shall not have been surrendered,

dividends with respect to such shares of Series A Preferred Stock or Series B 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 subsequent installments of the Redemption Price with interest, as provided in **Section 6(a)**, upon surrender of their certificate or certificates therefor.

(h) **Redeemed or Otherwise Acquired Shares.** Any shares of Series A Preferred Stock or Series B Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock or Series B Preferred Stock following redemption.

(i) **Look Back.** If within six (6) months after the Redemption Date, there is an actual or, as provided in **Section 1(c)**, a deemed, sale, liquidation or dissolution event or pricing of a qualified initial public offering for a price per share that is greater than the Redemption Price, the Corporation shall pay to the holders of those shares of the Series A Preferred Stock or Series B Preferred Stock that have been redeemed, the difference between the Redemption Price paid to them and the amount they would have been paid if the Redemption Right had not been exercised.

7. **DEEMED ISSUANCES; MISCELLANEOUS.**

(a) For the purpose of making any adjustment to the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock required under **Section 5(g)**, if the Corporation issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or anti-dilution clauses) is less than the Conversion Price then in effect for the Series A Preferred Stock or Series B Preferred Stock, as applicable, then the Corporation shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amounts of such consideration cannot be ascertained, but are a function of anti-dilution or similar protective clauses, then the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(ii) if the minimum amount of consideration payable to the Corporation upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall again be recalculated using the figure to which such minimum amount of consideration is reduced; and

(iii) if the minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that there actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply retroactively to prior conversions of Series A Preferred Stock or Series B Preferred Stock.

(b) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Conversion Price for the Series A Preferred Stock or Series B Preferred Stock, the Corporation, at its expense, shall cause its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Series A Preferred Stock or Series B Preferred Stock at the holder's address as shown in the Corporation's books.

(c) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon any conversion of Series A Preferred Stock or Series B Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.

(d) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common

Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock and Series B Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock and Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock and Series B Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(e) **Notices.** Any notice required to be given to the holders of shares of the Series A Preferred Stock and Series B Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

(f) **No Impairment.** The Corporation shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock and Series B Preferred Stock against impairment.

C. Rights, Preferences and Restrictions of 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, powers and preferences of the holders of the Preferred Stock set forth herein.

2. **VOTING.** The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of a majority of the stock of this Corporation entitled to vote, voting together in accordance with Section 4 of Article 5 of this Amended and Restated Certificate of Incorporation, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, amend and repeal the Bylaws of the Corporation as provided in said Bylaws.

ARTICLE VII

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

A director's disinterested failure to satisfy the requirements of Section 365 of the General Corporation Law of the State of Delaware shall not, for the purposes of Sections 102(b)(7) or 145 of such law, constitute an act or omission not in good faith, or a breach of the duty of loyalty.

Neither the amendment nor repeal of this Article VII, nor the adoption of any provision of the Amended and Restated Certificate of Incorporation or Bylaws or of any statute inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any acts or omissions occurring, or any causes of action, suits or claims that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VIII

The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the General Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified persons may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a Person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such Person. Any amendment, repeal or modification of this Article VIII shall not adversely affect any right or protection existing at the time of such amendment, repeal, modification or adoption.

ARTICLE IX

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this 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.

ARTICLE XI

In connection with repurchases by the Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, Sections 502 and 503 of the California Corporations Code shall not apply in all or in part with respect to such repurchases.