

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM421445

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Renewable Funding Group, Inc.		03/17/2017	Corporation: DELAWARE

RECEIVING PARTY DATA

Name:	Renew Financial Holdings Inc.
Street Address:	1221 Broadway, 4th Floor
City:	Oakland
State/Country:	CALIFORNIA
Postal Code:	94612
Entity Type:	Corporation: DELAWARE

PROPERTY NUMBERS Total: 9

Property Type	Number	Word Mark
Serial Number:	86391219	CALIFORNIAFIRST
Registration Number:	4940275	ENERGYLOAN
Registration Number:	3416343	ENERGYLOAN
Registration Number:	3371793	KEYSTONE HELP
Serial Number:	86822722	REHOME
Serial Number:	86626689	RENEW FINANCIAL
Serial Number:	86930206	RENEWLOAN
Serial Number:	86822691	RENEWPACE
Registration Number:	3377459	KEYSTONE HELP HOME ENERGY LOAN PROGRAM

CORRESPONDENCE DATA

Fax Number: 6504936811

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.

Phone: 650-493-9300

Email: trademarks@wsgr.com

Correspondent Name: Matthew J. Kuykendall

Address Line 1: WILSON SONSINI GOODRICH & ROSATI

Address Line 2: 650 Page Mill Road

Address Line 4: Palo Alto, CALIFORNIA 94304-1050

CH \$240.00 86391219

ATTORNEY DOCKET NUMBER:	38462.900/CZ2
NAME OF SUBMITTER:	Matthew J. Kuykendall
SIGNATURE:	/matt kuykendall/
DATE SIGNED:	03/28/2017

Total Attachments: 25

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Delaware

The First State

Page 1

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 "RENEWABLE FUNDING GROUP, INC.", CHANGING ITS NAME FROM "RENEWABLE FUNDING GROUP, INC." TO "RENEW FINANCIAL HOLDINGS INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF MARCH, A.D. 2017, AT 8:54 O`CLOCK A.M.

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




Jeffrey W. Bullock, Secretary of State

4732045 8100
SR# 20171821739

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

Authentication: 202213420
Date: 03-17-17

TRADEMARK
REEL: 006020 FRAME: 0771

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
RENEWABLE FUNDING GROUP, INC.

Renewable Funding Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), certifies that:

1. The name of the Corporation is Renewable Funding Group, Inc. The Corporation's original Certificate of Incorporation was filed with the Delaware Secretary of State on September 25, 2009.

2. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

3. The text of the Amended and Restated Certificate of Incorporation is amended and restated to read as set forth in **EXHIBIT A** attached hereto.

IN WITNESS WHEREOF, Renewable Funding Group, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Francisco DeVries, a duly authorized officer of the Corporation, on March 17, 2017.

/s/Francisco DeVries
Francisco DeVries
Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of the Corporation is Renew Financial Holdings Inc.

ARTICLE II

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

ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 1679 South DuPont Highway, Suite 100, Dover, Kent County, Delaware 19901. The name of the registered agent at such address is Registered Agent Solutions, Inc.

ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is fifty six million eight hundred fourteen thousand eight hundred fifty seven (56,814,857) shares consisting of thirty one million two hundred fifty thousand (31,250,000) shares of Common Stock, \$0.001 par value per share, and twenty five million five hundred sixty four thousand eight hundred fifty seven (25,564,857) shares of Preferred Stock, \$0.001 par value per share. The first Series of Preferred Stock shall be designated "**Series A-1 Preferred Stock**" and shall consist of four million ninety thousand six hundred ninety-seven (4,090,697) shares. The second Series of Preferred Stock shall be designated "**Series A-2 Preferred Stock**" and shall consist of two million three hundred fifty-five thousand eighty-six (2,355,086) shares. The third Series of Preferred Stock shall be designated "**Series B Preferred Stock**" and shall consist of one million five hundred ninety-one thousand nine hundred eighteen (1,591,918) shares. The fourth Series of Preferred Stock shall be designated "**Series C Preferred Stock**" and shall consist of two million three hundred twenty-six thousand six hundred thirty-one (2,326,631) shares. The fifth Series of Preferred Stock shall be designated "**Series D Preferred Stock**" and shall consist of five million eight hundred ninety-three thousand seven hundred twenty-one (5,893,721) shares. The sixth Series of Preferred Stock shall be designated "**Series E Preferred Stock**" and shall consist of nine million three hundred six thousand eight hundred four (9,306,804) shares.

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. **Definitions.** For purposes of this ARTICLE V, the following definitions shall apply:

(a) "**Affiliate**" shall mean, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such 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 by the same management company as, such Person.

(b) "**Conversion Price**" shall mean \$0.8556 per share for the Series A-1 Preferred Stock, \$1.3163 per share for the Series A-2 Preferred Stock, \$5.8106 per share for the Series B Preferred Stock, \$7.3067 per share for the Series C Preferred Stock, \$13.5860 per share for the Series D Preferred Stock, and

\$15.4562 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

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

(d) “*Corporation*” shall mean Renew Financial Holdings Inc.

(e) “*Distribution*” shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation or its subsidiaries for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase at the lower of (x) the cost or (y) the fair market value of such Common Stock, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, which settlement is approved by the Board of Directors (including a Preferred Director (as defined below)), and (iv) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Common Stock and Preferred Stock (voting together as a single class on an as-converted basis) of the Corporation voting as separate classes.

(f) “*Dividend Rate*” shall mean an annual rate of \$0.0684 per share for the Series A-1 Preferred Stock, \$0.1053 per share for the Series A-2 Preferred Stock, \$0.4648 per shares for the Series B Preferred Stock, \$0.5845 per share for the Series C Preferred Stock, \$1.0869 per share for the Series D Preferred Stock, and \$1.2365 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), based on a 365-day year.

(g) “*Financial Assets*” shall have the meaning ascribed to it in the Rights Agreement.

(h) “*FPA Metrics*” shall have the meaning ascribed to it in the Rights Agreement.

(i) “*FPA Negative Variance Triggers*” shall have the meaning ascribed to it in the Rights Agreement.

(j) “*Lead Series E Investor*” shall have the meaning ascribed to it in the Rights Agreement.

(k) “*Liquidation Event*” shall mean any (i) liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary or (ii) Change of Control (as defined below).

(l) “*Liquidation Preference*” shall mean \$0.8556 per share for the Series A-1 Preferred Stock, \$1.3163 per share for the Series A-2 Preferred Stock, \$5.8106 per share for the Series B Preferred Stock, \$7.3067 per share for the Series C Preferred Stock, \$13.5860 per share for the Series D Preferred Stock, and \$15.4562 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(m) “*Liquidity Plan*” shall have the meaning ascribed to it in the Rights Agreement.

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

(o) “*Original Issue Price*” shall mean \$0.8556 per share for the Series A-1 Preferred Stock, \$1.3163 per share for the Series A-2 Preferred Stock, \$5.8106 per share for the Series B Preferred Stock, \$7.3067 per share for the Series C Preferred Stock, \$13.5860 per share for the Series D Preferred Stock and \$15.4562 per share for the Series E Preferred Stock (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(p) “*Person*” shall mean any individual, corporation, partnership, trust, limited liability company, association or other entity.

(q) “*Preferred Stock*” shall mean the Series A-1 Preferred Stock, the Series A-2 Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock.

(r) “*Recapitalization*” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(s) “*Rights Agreement*” shall mean the Corporation’s Sixth Amended and Restated Investors’ Rights Agreement, dated on or about March 17, 2017, as may be amended from time to time.

(t) “*Secondary Tangible Net Worth Failure*” shall have the meaning ascribed to it in the Rights Agreement.

(u) “*Secondary TNW Failure Liquidity Plan*” shall have the meaning ascribed to it in the Rights Agreement.

(v) “*Series E Purchase Agreement*” shall mean the Corporation’s Series E Preferred Stock Purchase Agreement dated on or about March 17, 2017, as may be amended from time to time.

(w) “*Tangible Net Worth Failure*” shall have the meaning ascribed to it in the Rights Agreement.

2. Dividends.

(a) *Series E Preferred Stock.* Dividends on shares of Series E Preferred Stock shall begin to accrue on a daily basis at the prorated Dividend Rate from the date on which the Corporation issues such shares of Series E Preferred Stock and shall be cumulative and non-compounding and shall be paid when, as and if declared by the Board of Directors out of any assets at any time legally available therefore (the “*Series E Dividend*”). The Corporation shall have no obligation to pay the Series E Dividend, except upon the consummation of a Liquidation Event as expressly set forth in Article V Section 3 below or the consummation of a redemption undertaken pursuant to Article V Section 7 below.

(b) *Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock.* Subject to the prior payment in full of all accrued but unpaid dividend rights of the holders of the Series E Preferred Stock set forth herein, in any calendar year, the holders of outstanding shares of Series D Preferred Stock, Series C Preferred Stock, Series

B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such series of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock unless dividends on the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock have been paid or set aside for payment to the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock holders. The right to receive dividends on shares of Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. Payment of any dividends to the holders of Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rates for each such series of Preferred Stock.

(c) **Additional Dividends.** After the payment or setting aside for payment of the dividends described in **Section 2(a)** and **2(b)**, any additional dividends (other than dividends on Common Stock payable solely in Common Stock) set aside or paid in any fiscal year shall be set aside or paid among the holders of the Preferred Stock and Common Stock then outstanding in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted at the then effective Conversion Rate (as defined below).

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

(e) **Consent to Certain Distributions.** As authorized by Section 500 of the California Corporations Code, a distribution can be made without regard to any preferential dividends arrears amount (as defined in Section 500 of the California Corporations Code) or any preferential rights amount (as defined in Section 500 of the California Corporations Code) in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of Common Stock or Preferred Stock in connection with the settlement of disputes with any stockholder, (iv) any other repurchase or redemption of Common Stock or Preferred Stock approved by the holders of Preferred Stock of the Corporation.

3. **Liquidation Rights.**

(a) **Series E Preferred Stock Liquidation Preference.** In the event of a Liquidation Event, the holders of the Series E Preferred Stock shall be entitled to receive, on a pro rata (in proportion to the aggregate amounts payable to the holders of Series E Preferred Stock under this **Section 3(a)**), *pari passu* basis, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock, Series A-1 Preferred Stock or Common Stock by reason of their ownership of such stock, an amount per share for each share of Series E Preferred Stock held by them equal to the sum of (i) the Liquidation Preference

specified for such share of Series E Preferred Stock and (ii) the Series E Dividend (the “*Series E Liquidation Preference*”). If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series E Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this **Section 3(a)**, then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Series E Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 3(a)**.

(b) **Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock Liquidation Preference.** In the event of a Liquidation Event, after payment to the holders of the Series E Preferred Stock of the preferential amounts required by **Section 3(a)** hereof, the holders of the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock shall be entitled to receive, on a *pro rata* (in proportion to the aggregate amounts payable to the holders of the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock under this **Section 3(b)**), *pari passu* basis, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of such series of Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock and (ii) all declared but unpaid dividends on such share of Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock, or such lesser amount, with respect to any such series of Preferred Stock, as may be approved by the holders of the majority of the outstanding shares of such series. If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this **Section 3(b)**, then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 3(b)**.

(c) **Remaining Assets.** After the payment or setting aside for payment to the holders of Preferred Stock of the full preferential amounts specified in **Section 3(a)** and **3(b)**, the entire remaining assets of the Corporation legally available for distribution shall be distributed *pro rata* to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

(d) **Shares not Treated as Both Preferred Stock and Common Stock in any Distribution.** Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(e) **Reorganization.** For purposes of this **Section 3**, a Liquidation Event shall be deemed to be occasioned by, or to include either (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger, consolidation or Cash Liquidation Event (as defined in the Rights Agreement) but excluding any sale of stock in a bona fide financing transaction for capital raising purposes) in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, as a result of shares in the Corporation held by such holders prior to such transaction or series of related transactions, less than a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such

other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent), or (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries, taken as a whole, by means of any transaction or series of related transactions except where such sale, lease or other disposition is to a wholly-owned subsidiary of the Corporation, (each, a “**Change of Control**”). For the avoidance of doubt, a transaction involving solely the sale of Financial Assets in and of itself, whether in accordance with a Secondary TNW Failure Liquidity Plan, a Liquidity Plan or otherwise, shall not be deemed to trigger a Change of Control. The treatment of any transaction or series of related transactions as a Liquidation Event may be waived by the consent or vote of at least sixty percent (60%) of the outstanding Preferred Stock (voting as a single class and on an as-converted basis). Notwithstanding the foregoing, a Liquidation Event shall not be occasioned by the issuance of stock pursuant to customary bona fide equity financings by the Corporation for capital raising purposes or the sale or disposition of bonds or similar securities in the ordinary course of business. The Corporation shall not have the power to effect a Change of Control in which the Corporation is a constituent party unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with this **Section 3**.

(f) **Valuation of Non-Cash Consideration.** If any assets of the Corporation distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, *except that* any publicly-traded securities to be distributed to stockholders in a Liquidation Event shall be valued as follows:

(i) if the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this **subsection 3(f)**, “**trading day**” shall mean any day which the exchange or system on which the securities to be distributed are traded is open and “**closing prices**” or “**closing bid prices**” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(g) **Allocation of Escrow and Contingent Consideration.** In the event of a Change of Control in which the Corporation is a constituent party, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), the Merger Agreement shall provide that (i) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with this **Section 3** as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional

Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with **Section 3** after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this **Section 3(g)**, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

(h) **Notional Conversion.** Notwithstanding anything to the contrary in this Section 3, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of Preferred Stock into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such shares of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "**Conversion Rate**" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this **Section 4**, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "**Securities Act**"), covering the offer and sale of the Corporation's Common Stock, *provided* that the aggregate gross proceeds are not less than \$50,000,000, (a "**Qualified Offering**") (net of underwriters' discounts, concessions, commissions and expenses) at a price per share at least equal to \$23.1843 or (ii) pursuant to the vote or written consent by the holders of a majority of the then outstanding shares of the series of Preferred Stock of such share of Preferred Stock requesting such conversion, or, if later, the effective date for such conversion specified in such vote or written consent (each of the events referred to in (i) and (ii) are referred to herein as an "**Automatic Conversion Event**").

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost,

stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; *provided, however*, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without 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 further*, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of 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 Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates (or a notice of issuance of uncertificated shares, if applicable) for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock, *provided* that no accrued but unpaid cumulative dividends shall be included in such amount. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; *provided, however*, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) *Adjustments to Conversion Price for Diluting Issues.*

(i) *Special Definition.* For purposes of this paragraph 4(d), “*Additional Shares of Common*” shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of ((1) through (7) below, “*Exempt Securities*”):

- (1) shares of Common Stock upon the conversion of the Preferred Stock;
- (2) shares of Common Stock and Convertible Securities issued or issuable to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar arrangements, in each case approved by the Board of Directors, not to exceed an aggregate of 4,636,327 shares (as adjusted for any Recapitalizations) (the “*Option Pool Cap*”), whether issued before, on or after the filing date of this Amended and Restated Certificate of Incorporation (the “*Filing*”

Date"); provided, however, that any shares of Common Stock (x) not issued pursuant to Convertible Securities as a result of the termination or expiration thereof prior to their exercise, exchange or conversion, as applicable (collectively, "*Unexercised Options*"), or (y) reacquired by the Corporation from employees, officers, directors, consultants or advisors at no more than cost pursuant to agreements that permit the Corporation to repurchase such shares upon termination of services to the Corporation shall not be counted toward such maximum number unless and until such shares are re-granted as shares of Common Stock and/or Convertible Securities; provided, further, that such Option Pool Cap may be increased at any time by the Board of Directors (including a majority of the Preferred Directors);

(3) shares of Common Stock upon the exercise or conversion of Options or Convertible Securities as of the Filing Date;

(4) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to **paragraph 4(e), 4(f) or 4(g)** hereof;

(5) shares of Common Stock issued or issuable in a Qualified Offering;

(6) shares of Common Stock issued or issuable in connection with real estate leases, or to banks, equipment lessors or other financial institutions, venture lenders, advisors to the Corporation or other suppliers or third party service providers in connection with the provision of goods and services to the Corporation pursuant to a debt financing or commercial transaction approved by the Board of Directors (including a majority of the Preferred Directors); and

(7) shares of Common Stock issued or issuable in connection with any joint ventures, development projects, acquisitions or other strategic transactions, in each case approved by the Board of Directors (including a majority of the Preferred Directors).

(ii) **No Adjustment of Conversion Price.** No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to **paragraph 4(d)(v)**) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Preferred Stock.

(iii) **Deemed Issue of Additional Shares of Common.** In the event the Corporation at any time or from time to time after the date of the filing of this Amended and Restated Certificate of Incorporation 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 (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been 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 in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this **Section 4(d)** or pursuant to Recapitalization provisions of such Options or Convertible Securities such as **Sections 4(e), 4(f) and 4(g)** hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) 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 of each Series of Preferred Stock 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:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common 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 such exercised Options 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

(b) 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 deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to **Section 4(d)(v)**) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this **paragraph 4(d)(iii)** as of the actual date of their issuance.

(iv) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.** In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to **paragraph 4(d)(iii)**) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued

would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of this **subsection (d)(iv)**, all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

In the event the Corporation shall issue on more than one date Additional Shares of Common that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price of a series of Preferred Stock, and such issuance dates occur within a period of no more than 90 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price of such series shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

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

(1) **Cash and Property.** Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) 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; and

(c) in the event Additional Shares of Common 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 (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to **paragraph 4(d)(iii)** shall be determined by dividing

(x) the total amount, if any, received or receivable 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 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

(y) 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 subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) **Adjustments for Subdivisions or Combinations of Common Stock.** In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) **Adjustments for Subdivisions or Combinations of Preferred Stock.** In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) **Adjustments for Reclassification, Exchange and Substitution.** Subject to Section 3 ("**Liquidation Rights**"), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock 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 like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) **Waiver of Adjustment of Conversion Price.** Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of the majority of the outstanding shares of such series either before or after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(j) **Notices of Record Date.** In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a Liquidation Event pursuant to **Section 3(e)**;

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of a majority of the Preferred Stock, voting as a single class and on an as-converted basis.

(k) **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 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 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 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.

5. **Voting.**

(a) **Restricted Class Voting.** Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) **No Series Voting.** Other than as provided herein or required by law, there shall be no series voting.

(c) **Preferred Stock.** Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. 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 Preferred Stock held by each holder could be converted), shall be disregarded.

(d) **Election of Directors.** The holders of Series E Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors (the "**Series E Preferred Directors**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Series D Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors (the "**Series D Preferred Directors**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Series C Preferred Stock, Series B Preferred Stock, Series A-2 Preferred Stock and Series A-1 Preferred Stock, voting as a single class, shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "**Series Preferred Director**", and collectively with the Series E Preferred Directors and the Series D Preferred Directors, the "**Preferred Directors**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. Any additional members of the Corporation's Board of Directors shall be elected by holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors elected by the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy. In the event that there are no remaining directors serving in such class or classes, any such vacancies may be filled pursuant to appointment by the Board of Directors and a majority of the remaining directors thereon.

(e) **Operating Committee.** Each member of the Operating Committee will be entitled to one vote on all matters that are presented to such Operating Committee to the extent all four members are at the meeting; provided, however, that if only one Series D Preferred Director or one Series E Preferred Director is in attendance, then the member for which there is only one director represented at the meeting will be entitled to two votes on all matters presented to such Committee; provided, further, that in the event that (i) a Secondary Tangible Net Worth Failure exists during any Monthly Reporting Period (as defined in the Rights Agreement) and for so long as a Secondary Tangible Net Worth Failure continues to exist (as measured by subsequent Tangible Net Worth Reports) and (ii) a majority vote is unable to be achieved with respect to an Operating Committee Casting Vote Matter (as defined herein), each of the Series E Preferred Directors shall be entitled to two votes (the "**Operating Committee Series E Director Casting Vote**") with respect to the approval, modification or implementation of the Remediation Plan (as defined in the Rights Agreement) and the Tangible Net Worth Failure Board Actions (as defined in the Rights Agreement) as contemplated by Section 5.5(c)(i) of the Rights Agreement (each, an "**Operating Committee Casting Vote Matter**"). For the avoidance of doubt, the Operating Committee Series E Director Casting Vote shall terminate and no longer be in effect when a Secondary Tangible Net Worth Failure ceases to exist.

(f) **Adjustment in Authorized Common Stock.** The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the capital stock of the Corporation entitled to vote thereon, without a vote of the holders of the Common Stock voting as a separate class, irrespective of the provision of Section 242(b)(2) of the Delaware General Corporation Law.

(g) **Common Stock.** Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

(h) **California Section 2115.** To the extent that Section 2115 of the California General Corporation Law makes Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law applicable to the Corporation, the Corporation's stockholders shall have the right to cumulate their votes in

connection with the election of directors as provided by Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law.

6. **Amendments and Changes.**

(a) **Preferred Stock Protective Provisions.**

(i) **Required Approvals.**

(1) For so long as more than 5,112,971 shares of Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) originally issued by the Corporation remain outstanding, the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) enter into or take any Protected Actions, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the voting power of the outstanding shares of the Preferred Stock (voting together as a single class on an as-converted basis) (the "**Preferred Approval Right**").

(2) Additionally, so long as, either (A) at least 3,792,498 shares of Series E Preferred Stock remain outstanding (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), or (B) in the event of a Redemption Election, any shares of Series E Preferred Stock remain outstanding, the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) enter into or take any Protected Actions without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the outstanding shares of Series E Preferred Stock (the "**Series E Approval Right**").

(3) Notwithstanding the above, if a Tangible Net Worth Failure has occurred and continues, the Protected Actions described in **Sections 6(a)(ii)(11)** and **6(a)(ii)(12)** below shall not require or be subject to the Preferred Approval Right or the Series E Approval Right.

(4) Any Protected Action entered into or taken in contravention of this **Section 6(a)(i)** shall be null and void *ab initio*, and of no force or effect.

(ii) **Protected Actions.** The following acts or transactions of the Corporation shall constitute "**Protected Actions**" hereunder:

(1) amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or bylaws of the Corporation; provided, however, the Series E Approval Right shall not be required for this action;

(2) authorize, designate or create (by reclassification, merger or otherwise) or issue or obligate itself to issue any new class or series of equity security having rights, preferences or privileges senior to or on a parity with any series of Preferred Stock; provided, however, the Series E Approval Right shall not be required for this action in respect of any new class or series of equity security having a liquidation preference that ranks junior to the Series E Liquidation Preference;

(3) change the authorized number of members of the Board of Directors of the Corporation;

(4) consummate or enter into an agreement to consummate any merger, other corporate reorganization or Liquidation Event; provided, however, the Series E Approval Right shall not be required with respect to a Liquidation Event in which the Series E Preferred Stock is entitled to receive

consideration equal to at least 1.5 times the Original Issue Price of the Series E Preferred Stock; provided, further, that the Preferred Approval Right shall not be required with respect to a Liquidation Event effectuated as a result of the implementation of Secondary TNW Failure Liquidity Plan following a Redemption Failure for so long as such Redemption Failure continues;

(5) declare or pay any dividends or Distributions to any stockholder, other than the Series E Dividend or redemptions of the Series E Preferred Stock pursuant to **Section 7(a)** of this **Article V**;

(6) redeem or repurchase any shares of Preferred Stock or Common Stock (other than (x) repurchases of Common Stock from service providers pursuant to (i) a right of first refusal or, (ii) upon termination of their service, a share repurchase agreement that provides for such repurchase at the lower of the cost or the then fair market value of such shares; or (y) redemption pursuant to **Section 7(a)** of this **Article V**;

(7) enter into any borrowing, loan or guarantee by the Corporation, other than (A) borrowings, loans or guarantees by the Corporation of not more than \$3,000,000, (B) borrowings, loans or guarantees approved by the Board of Directors, including a majority of the Preferred Directors, or (C) borrowings, loans or guarantees by the Corporation or a subsidiary in the ordinary course of the Corporation's or such subsidiary's business in connection with municipal clean energy bond programs developed, administered, serviced or financed by the Corporation or such subsidiary;

(8) permit any subsidiary to sell, transfer, or otherwise dispose, (in a single transaction or series of related transactions) of a material amount of such subsidiary's assets through a (x) merger, (y) sale of all or substantially all of its assets, capital stock or membership interest to one or more third parties, or (z) transfer of majority voting power in such subsidiary to one or more third parties, other than, in each case, (i) to the Corporation or a subsidiary of the Corporation in which the Corporation holds majority voting power, (ii) in the ordinary course of business, or (iii) if approved by the Board (including a majority of the Preferred Directors);

(9) enter into any transaction with any director, officer or employees of the Corporation or any of its subsidiaries, or any "associate" (as defined in Rule 12b-2 promulgated under the Securities and Exchange Act of 1934, as amended) of any such person, including without limitation any "management bonus" or similar plan providing payments to any employees in connection with a Liquidation Event, other than (A) ordinary course employment compensation arrangements, (B) financing transactions subject to Section 4.1 of the Rights Agreement, (C) transactions with direct or indirect, wholly owned subsidiaries, and (D) other negotiated arm's length transactions approved by the Board of Directors, including a majority of the disinterested directors unaffiliated with the third party to the transaction;

(10) any fundamental change to the principal line of business of the Corporation;

(11) any approval of an annual budget or any material modification of an existing annual budget (including FPA Metrics, FPA Parameters and FPA Negative Variance Triggers associated therewith), unless approved by the Board of Directors (including a majority of the Preferred Directors); or

(12) any approval of a Liquidity Plan or any material modification of an existing Liquidity Plan, unless approved by the Board of Directors (including a majority of the Preferred Directors).

(b) **Series A-1 Preferred Stock Protective Provisions.** For so long as at least 20% of the originally issued shares of the Series A-1 Preferred Stock remain outstanding (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) take any of the actions or enter into any the transactions below, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the voting power of the outstanding shares of the Series A-1 Preferred Stock (voting together as a single class on an as-converted basis), and any such act or transaction entered into without such approval shall be null and void *ab initio*, and of no force or effect:

- (i) Amend this Amended and Restated Certificate of Incorporation or the Corporation's bylaws in a manner that would adversely affect the rights, preferences or privileges of the Series A-1 Preferred Stock in a different manner than the other series of the Corporation's Preferred Stock. For the purposes of this **ARTICLE V Section 6(b)(i)** the authorization of a new series or class of the Corporation's Preferred Stock that is senior to or is *pari passu* with the Series A-1 Preferred Stock shall not, in and of itself, be considered to adversely affect the Series A-1 Preferred Stock; or
- (ii) increase or decrease the authorized number of shares of Series A-1 Preferred Stock.

(c) **Series A-2 Preferred Stock Protective Provisions.** For so long as at least 20% of the originally issued shares of the Series A-2 Preferred Stock remain outstanding (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) take any of the actions or enter into any the transactions below, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the voting power of the outstanding shares of the Series A-2 Preferred Stock (voting together as a single class on an as-converted basis), and any such act or transaction entered into without such approval shall be null and void *ab initio*, and of no force or effect:

- (i) Amend this Amended and Restated Certificate of Incorporation or the Corporation's bylaws in a manner that would adversely affect the rights, preferences or privileges of the Series A-2 Preferred Stock in a different manner than the other series of the Corporation's Preferred Stock. For the purposes of this **ARTICLE V Section 6(c)(i)** the authorization of a new series or class of the Corporation's Preferred Stock that is senior to or is *pari passu* with the Series A-2 Preferred Stock shall not, in and of itself, be considered to adversely affect the Series A-2 Preferred Stock; or
- (ii) increase or decrease the authorized number of shares of Series A-2 Preferred Stock.

(d) **Series B Preferred Stock Protective Provisions.** For so long as at least 20% of the originally issued shares of the Series B Preferred Stock remain outstanding (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) take any of the actions or enter into any the transactions below, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the voting power of the outstanding shares of the Series B Preferred Stock (voting together as a single class on an as-converted basis), and any such act or transaction entered into without such approval shall be null and void *ab initio*, and of no force or effect:

- (i) Amend this Amended and Restated Certificate of Incorporation or the Corporation's bylaws in a manner that would adversely affect the rights, preferences or privileges of the Series B Preferred Stock in a different manner than the other series of the Corporation's Preferred Stock. For the purposes of this **ARTICLE V Section 6(d)(i)** the authorization of a new series or class of the Corporation's Preferred Stock that is senior to or is *pari passu* with the Series B Preferred Stock shall not, in and of itself, be considered to adversely affect the Series B Preferred Stock; or
- (ii) increase or decrease the authorized number of shares of the Series A-1 Preferred Stock, Series A-2 Preferred Stock or Series B Preferred Stock.

(e) **Series C Preferred Stock Protective Provisions.** For so long as at least 20% of the originally issued shares of the Series C Preferred Stock remain outstanding (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) take any of the actions or enter into any the transactions below, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the voting power of the outstanding shares of the Series C Preferred Stock (voting together as a single class on an as-converted basis), and any such act or transaction entered into without such approval shall be null and void *ab initio*, and of no force or effect:

- (i) Amend this Amended and Restated Certificate of Incorporation or the Corporation's bylaws in a manner that would adversely affect the rights, preferences or privileges of the Series C Preferred Stock in a different manner than the other series of the Corporation's Preferred Stock. For the purposes of this **ARTICLE V Section 6(e)(i)** the authorization of a new series or class of the Corporation's Preferred Stock that is senior to or is *pari passu* with the Series C Preferred Stock shall not, in and of itself, be considered to adversely affect the Series C Preferred Stock; or
- (ii) increase or decrease the authorized number of shares of the Series C Preferred Stock.

(f) **Series D Preferred Stock Protective Provisions.** For so long as at least 20% of the originally issued shares of the Series D Preferred Stock remain outstanding (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) take any of the actions or enter into any the transactions below, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the voting power of the outstanding shares of the Series D Preferred Stock (voting together as a single class on an as-converted basis), and any such act or transaction entered into without such approval shall be null and void *ab initio*, and of no force or effect:

- (i) Amend this Amended and Restated Certificate of Incorporation or the Corporation's bylaws in a manner that would adversely affect the rights, preferences or privileges of the Series D Preferred Stock in a different manner than the other series of the Corporation's Preferred Stock. For the purposes of this **ARTICLE V Section 6(f)(i)** the authorization of a new series or class of the Corporation's Preferred Stock that is senior to or is *pari passu* with the Series D Preferred Stock shall not, in and of itself, be considered to adversely affect the Series D Preferred Stock; or

- (ii) increase or decrease the authorized number of shares of the Series D Preferred Stock.

(g) **Series E Preferred Stock Protective Provisions.** For so long as at least 20% of the originally issued shares of the Series E Preferred Stock remain outstanding (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), the Corporation shall not (whether consummated by merger, reorganization, amendment or otherwise) take any of the actions or enter into any the transactions below, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than fifty percent (50%) of the voting power of the outstanding shares of the Series E Preferred Stock (voting together as a single class on an as-converted basis), and any such act or transaction entered into without such approval shall be null and void *ab initio*, and of no force or effect:

- (i) Amend this Amended and Restated Certificate of Incorporation or the Corporation's bylaws in a manner that would adversely affect the rights, preferences or privileges of the Series E Preferred Stock in a different manner than the other series of the Corporation's Preferred Stock. For the purposes of this **ARTICLE V Section 6(g)(i)** the authorization of a new series or class of the Corporation's Preferred Stock that is senior to or is *pari passu* with the Series E Preferred Stock shall not, in and of itself, be considered to adversely affect the Series E Preferred Stock; or
- (ii) increase or decrease the authorized number of shares of Series E Preferred Stock.

7. **Redemption.**

(a) At any time after the occurrence of a Secondary Tangible Net Worth Failure, and at the written election (the "**Redemption Election**") of the Lead Series E Investor for so long as such Lead Series E Investor continues to hold any shares of Series E Preferred Stock (the "**Series E Requisite Holders**"), the Corporation shall redeem, out of funds legally available therefor, all outstanding shares of Series E Preferred Stock, except for shares of Series E Preferred Stock held by a Non-Redeeming Series E Holder (as defined below) as to which the Corporation has timely received a Series E Redemption Opt-Out Notice (as defined below), on the date that is 90 days following the day on which the Corporation receives the Redemption Election (as determined in accordance with **Section 8b** below) (the "**Redemption Date**"); provided that if the Secondary Tangible Net Worth Failure ceases to exist on the Redemption Date, then the Corporation shall have no right or obligation to redeem Series E Preferred Stock on the Redemption Date, and the holders of Series E Preferred Stock shall have no right to require such redemption; provided, further, that if the Secondary Tangible Net Worth Failure shall thereafter occur again, the Series E Requisite Holders shall thereafter have the rights to elect to be redeemed as set forth herein. Within 15 days of receiving the Redemption Election, the Corporation shall provide written notice to all other holders of record of Series E Preferred Stock other than the Series E Requisite Holder of the redemption that is the subject of the Redemption Election, which notice shall specify the identity of the Series E Requisite Holders, the proposed Redemption Date and the proposed Redemption Price (the "**Series E Redemption Election Notice**"). Any holder of Series E Preferred Stock may elect not to have its shares of Series E Preferred Stock redeemed by the Corporation (the "**Non-Redeeming Series E Holder**", collectively the "**Non-Redeeming Series E Holders**") and instead have all such shares remain outstanding by providing the Corporation with written notice of its election not to have its shares of Series E Preferred Stock redeemed, such notice to be provided to the Corporation within 15 days of its receipt of the Series E Redemption Election Notice (the "**Series E Redemption Opt Out Notice**"). The Corporation shall redeem the shares of Series E Preferred Stock held by the holders of the Series E Preferred Stock other than the Non-Redeeming Series E Holders by paying in cash an amount per share equal to the Original Issue Price for such Series E Preferred Stock, plus the Series E

Dividend thereon (the "**Redemption Price**"). For the avoidance of doubt, the Series E Dividend shall continue to accrue at the Series E Dividend Rate until the actual date the redemption payment is made by the Corporation.

(b) Except as provided herein, on or after the Redemption Date, each holder of Series E Preferred Stock to be redeemed shall surrender to this Corporation any certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof (or, in the case of uncertificated shares, to the order of the person registered on the Corporation's books as the owner of the shares) and each such surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate or reflected in a book entry are redeemed, a new certificate shall be issued or a new book entry shall be made, as may be applicable, representing the unredeemed shares. Any shares of Series E Preferred Stock which are redeemed or otherwise acquired by the Corporation will be cancelled and will not be reissued sold or transferred.

(c) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series E Preferred Stock designated for redemption in the Redemption Notice as holders of Series E Preferred Stock (except the right to receive the Redemption Price without interest, upon surrender of their certificate or certificates (in the case of certificated shares)) shall cease with respect to the shares designated for redemption on such date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series E Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series E Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series E Preferred Stock. The shares of Series E Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein; provided, however, a redemption failure shall be deemed to occur if the Corporation fails to redeem all shares of Series E Preferred Stock, subject to a Redemption Election, held by the Lead Series E Investor as of the Redemption Date (the "**Redemption Failure**"); provided, however, if the Lead Series E Investor determines to provide a Lead Investor Opt Out Notice to the Corporation pursuant to Section 7(d) below, then a Redemption Failure shall not be deemed to have occurred with respect to the Shares included in the Lead Investor Opt Out Notice. At the end of each fiscal quarter following the Redemption Date, if and when additional funds of the Corporation are legally available for the redemption of shares of Series E Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on the Redemption Date, but which it has not redeemed (such date, a "**Quarterly Redemption Date**").

(d) Following the Redemption Date, any holder of shares of Series E Preferred Stock to be so redeemed may elect not to have its shares of Series E Preferred Stock redeemed by the Corporation and instead have all such shares remain outstanding by providing the Corporation with written notice of its election not to have its shares of Series E Preferred Stock redeemed, such notice to be provided to the Corporation within 15 days following the Redemption Date or any Quarterly Redemption Date (the "**Lead Investor Opt Out Notice**"); provided, however, that for the avoidance of doubt, the Redemption Election shall be irrevocable through the Redemption Date. In the event that the Corporation receives a bona fide offer that would or could result in a Change of Control prior to the redemption of all shares of Series E Preferred Stock set forth in a Series E Redemption Election Notice, any holder of shares Series E Preferred Stock not yet redeemed may elect not to have such shares of Series E Preferred Stock redeemed by the Corporation and instead have all such shares remain outstanding by providing the Corporation with written notice of its election not to have its shares of Series E Preferred Stock redeemed at any time prior to the actual redemption of it shares of Series E Preferred Stock.

8. **Notices.**

(a) Any notice required by the provisions of this **ARTICLE V** to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

(b) Any notice required by the provision of this **ARTICLE V** to the Corporation must be in writing and shall be deemed given or effective if (i) mailed by registered or certified mail, postage prepaid, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed to the attention of the Legal Department of the Corporation at 1221 Broadway, 4th Floor, Oakland, California 94607, (ii) sent by electronic mail to notices@renewfinancial.com, when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient's next business day or (iii) delivered by hand, messenger or courier service, when delivered (or if sent via a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier).

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

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

ARTICLE VIII

Unless otherwise set forth herein, the number of directors that constitute the Board of Directors of the Corporation shall be fixed by, or in the manner provided in, the Bylaws of the Corporation

ARTICLE IX

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

ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "*Proceeding*") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint

venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. A right to indemnification or to advancement of expenses arising under a provision of this Amended and Restated Certificate of Incorporation or a bylaw of the Corporation shall not be eliminated or impaired by an amendment to this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

3. Neither any amendment nor repeal of this **ARTICLE X**, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this **ARTICLE X**, shall eliminate or reduce the effect of this **ARTICLE X**, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this **ARTICLE X**, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

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 of 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 XII

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter or transaction that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "**Covered Persons**"), unless such matter or transaction is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation; and *provided; further* that the Covered Person acts in good faith.

ARTICLE XIII

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of

Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Thirteenth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Thirteenth (including, without limitation, each portion of any sentence of this Article Thirteenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

ARTICLE XIV

For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Certificate of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero (0).