

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

HARRY & DAVID HOLDINGS, INC.

Harry & David Holdings, Inc., a corporation organized under and by virtue of the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. The Corporation filed its original certificate of incorporation in Delaware under the name "Pear Acquisition Inc." on March 17, 2004, which was subsequently amended and restated on June 15, 2004 and further amended on August 13, 2004 and July 29, 2005.

2. This Second Amended and Restated Certificate of Incorporation (the "**Certificate**") amends and restates in its entirety the Amended and Restated Certificate of Incorporation of the Corporation, as amended and in effect on the date hereof.

3. On March 28, 2011 the Corporation and its subsidiaries filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*") with the United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Court*").

4. This Certificate shall be effective on September 13, 2011 in accordance with its terms without board of directors or stockholder approval pursuant to Section 303 of the Delaware General Corporation Law ("*DGCL*") as it has been adopted pursuant to the Second Amended Joint Plan of Reorganization of Harry & David Holdings, Inc. and its Debtor Subsidiaries dated as of June 20, 2011 (as amended, supplemented, or modified from time to time, the "*Plan*"), as confirmed by order of the Bankruptcy Court on August 29, 2011.

5. This Certificate has been duly executed and acknowledged by an officer of the Corporation designated by order of the Bankruptcy Court in accordance with the provisions of Sections 242, 245 and 303 of the DGCL.

6. The text of the Amended and Restated Certificate of Incorporation as amended and in effect on the date hereof is hereby amended and restated in its entirety to read as follows:

ARTICLE I.

NAME

The name of the corporation is "Harry & David Holdings, Inc."

ARTICLE II.

PURPOSE

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE III.
REGISTERED AGENT

The street address of the initial registered office of the Corporation in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, in the City of Wilmington, County of New Castle. The name of the Corporation's initial registered agent at such address is Corporation Service Company.

ARTICLE IV.
CAPITALIZATION

Section 4.1 Authorized Capital Stock. The total number of shares of capital stock which the Corporation is authorized to issue is One Million Two Hundred Thousand (1,200,000) shares of capital stock, comprised of One Million One Hundred Thousand (1,100,000) shares of common stock, par value \$0.01 per share (the "**Common Stock**"), and One Hundred Thousand (100,000) shares of preferred stock, par value \$0.01 per share (the "**Preferred Stock**"), and together with the Common Stock, the "**Shares**" (in determining the number of outstanding Shares, the Preferred Stock will be determined on an as converted basis)). Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code, the Corporation will not issue non-voting equity securities; provided, however, the foregoing restriction (a) will have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) will only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect. The powers, preferences and relative, participating, optional and other special rights of the respective classes of the Corporation's capital stock or the holders thereof and the qualifications, limitations and restrictions thereof are set forth in this ARTICLE IV, and may differ from those of any and all other series at any time outstanding.

Section 4.2 Preferred Stock.

(a) Shares of Preferred Stock may be issued in one or more series from time to time, with each such series to consist of such number of shares and to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the board of directors of the Corporation (the "**Board**") and included in a certificate of designations (a "**Preferred Stock Designation**") filed pursuant to the DGCL, and the Board is hereby expressly vested with the authority, to the full extent now or hereafter provided by law, to adopt any such resolution or resolutions. The authority of the Board with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

(i) the number of shares constituting that series and the distinctive designation of that series;

(ii) the dividend rate or rates on the shares of that series, the terms and conditions upon which and the periods in respect of which dividends shall be payable,

whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

(iii) whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights; provided, that during the Initial Period, no Shares of Preferred Stock shall have the right to designate any additional directors to the Board, nor shall the size of the Board be increased to allow for any such additional directors, without limitation to the rights, if any, of such Shares to vote in the election of directors generally;

(iv) whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board shall determine;

(v) whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in the event of redemption, which amount may vary under different conditions and at different redemption dates;

(vi) whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;

(vii) the rights of the shares of that series in the event of voluntary or involuntary liquidation, distribution of assets, dissolution or winding up of the corporation, and the relative rights of priority, if any, of payment of shares of that series; and

(viii) any other relative rights, powers, and preferences, and the qualifications, limitations and restrictions thereof, of that series.

All shares of the Preferred Stock of any one series shall be identical to each other share of Preferred Stock of such same series in all respects, except that shares of any one series issued at different times may differ as to the dates from which dividends thereon, if cumulative, shall be cumulative.

(b) Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Certificate (including any Preferred Stock Designation), the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock, irrespective of the provisions of Section 242(b)(2) of the DGCL.

Section 4.3 Common Stock.

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of shares of Common Stock are entitled to vote. Except as otherwise required by law or this Certificate, including any Preferred Stock Designation, at any annual or special meeting of the stockholders of the Corporation, the holders of Common Stock shall have the exclusive right to

vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Notwithstanding the foregoing, except as otherwise required by law or this Certificate (including a Preferred Stock Designation), the holders of Common Stock shall not be entitled to vote on any amendment to this Certificate (including any amendment to any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the provisions of this Certificate (including any Preferred Stock Designation).

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

Section 4.4 Preemptive Rights.

(a) If the Corporation proposes to offer and issue New Securities to any Person, the Corporation shall, before such New Securities are issued, provide written notice (such notice, the “**Preemptive Offer**”) to each holder of Common Stock that (i) has on file with the Corporation a certification that such holder (or, in the case of a holder that is a nominee for a beneficial owner, such beneficial owner) is an “accredited investor” as defined in Regulation D promulgated under the Securities Act (which certification the Corporation may require to be updated from time to time, including at the time of any Purchase Notice), and (ii) holds of record five percent (5%) or more of the Shares of Common Stock outstanding on the date the Preemptive Offer is sent by the Corporation (a “**Qualified Holder**”), addressed to each such Qualified Holder at the address at which its Shares are registered on the Share registry of the Corporation, an offer to issue to such Qualified Holder such Qualified Holder’s Pro Rata Share of such New Securities upon the terms set forth in this Section 4.4. The Preemptive Offer shall be delivered at least ten (10) business days prior to the issuance of such New Securities and shall state that the Corporation proposes to issue New Securities and shall include the aggregate number of the New Securities, and the terms thereof, to which the Preemptive Offer relates (including the purchase price therefor). Each Qualified Holder shall be entitled to purchase (at the same purchase price per share as other purchasers of the New Securities at that time) a portion of the New Securities (based upon the number of Shares of Common Stock of the Corporation owned by such Qualified Holder compared to the number of outstanding Shares of the Corporation (on an as if converted to Common Stock basis)) on the date on which the Preemptive Offer is sent to such Qualified Holders (such portion, a Qualified Holder’s “**Pro Rata Share**”).

(b) Each Qualified Holder receiving the Preemptive Offer may accept the Preemptive Offer by delivering to the Corporation a written notice (the “**Purchase Notice**”) prior to the expiration time specified in the Preemptive Offer, which shall be at least ten (10) business days from the date the Preemptive Offer is sent (the “**Expiration Time**”) committing such Qualified Holder irrevocably to purchase New Securities (if any are issued), and the number of New Securities such Qualified Holder desires to purchase (up to its Pro Rata Share), which shall be at the purchase price and on the other terms and conditions stated in the Preemptive Offer.

(c) Each Qualified Holder exercising in full its right to purchase its Pro Rata Share of the New Securities (an “**Exercising Stockholder**”) shall have a right of over-allotment such that if any other Qualified Holder fails to exercise in full its right hereunder to purchase its Pro Rata Share of the New Securities (each, a “**Non-Purchasing Stockholder**”), such Exercising Stockholder may elect to purchase additional New Securities by giving written notice (the “**Additional Acceptance Notice**”) to the Corporation within five business days from the date that the Corporation provides such Exercising Stockholder with written notice of the number or amount of New Securities as to which all Non-Purchasing Stockholders have failed to exercise their rights to purchase their full Pro Rata Share under this Section 4.4 (the “**Available Additional Securities**”). The Corporation shall give such written notice to all Exercising Stockholders no later than the sixteenth (16th) business day from the date the Preemptive Offer is sent. If more than one Exercising Stockholder submits Additional Acceptance Notices under this Section 4.4(c) to purchase New Securities in an amount exceeding the Available Additional Securities, then each such Exercising Stockholder shall be entitled to purchase up to an amount of Available Additional Securities equal to the aggregate amount of all Available Additional Securities multiplied by a fraction (expressed as a percentage rounded to two decimal places), the numerator of which is the number of Shares of Common Stock held by such Exercising Stockholder and the denominator of which is the aggregate number of Shares of Common Stock held by all Exercising Stockholders that have submitted an Additional Acceptance Notice under this Section 4.4(c).

(d) The issuance of New Securities to the Qualified Holders that timely delivered a properly completed Purchase Notice to the Corporation shall be made on a business day, as designated by the Corporation, not less than ten (10) calendar days and not more than ninety (90) calendar days after the Expiration Time on those terms and conditions of the Preemptive Offer not inconsistent with this Section 4.4.

(e) If the number of New Securities the Corporation proposes to issue exceeds the sum of all New Securities elected to be purchased by Qualified Holders pursuant to Purchase Notices and Additional Acceptance Notices timely and properly delivered to the Corporation, the Corporation may issue such excess, or any portion thereof, for the same purchase price as described in the Preemptive Offer, to any Person at any time during the period commencing one business day after the Expiration Time (or, if applicable, one business day after the deadline for the delivery of Additional Acceptance Notices) and ending ninety (90) calendar days after the Expiration Time. If such issuance is not made within such ninety (90) calendar day period, or if the Corporation modifies the purchase price to be paid or other material terms of sale during such ninety (90) calendar day period, the restrictions provided for in this Section 4.4 shall again become effective as to such modified terms.

(f) All notices to be given pursuant to this Section 4.4 shall be made in writing and shall be deemed given (x) on the third (3rd) business day after mailing by U.S. certified or registered mail, postage prepaid or (y) on the business day after depositing with a nationally recognized overnight courier generally guaranteeing next business day delivery, and shall be addressed (i) to any holder of Common Stock at the address at which its Shares are registered on the Share registry of the Corporation, and (ii) to the Corporation at its principal executive office.

(g) The provisions of this Section 4.4 shall terminate upon on the earlier of (i) such time as the Common Stock of the Corporation becomes required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, and (ii) the affirmative vote of the Required Stockholders.

ARTICLE V. DURATION

The Corporation is to have perpetual existence.

ARTICLE VI. DIRECTORS

Section 6.1 Number; Election and Term.

(a) The number of directors constituting the Board shall be no fewer than five (5) and not more than seven (7). During the Initial Period, the number of directors constituting the Board shall be set at five (5). Following the Initial Period, and subject to this Section 6.1(a) and Section 6.5(d), the precise number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series pursuant to the terms of this Certificate (including any Preferred Stock Designation), shall be fixed from time to time by resolution of the Board in accordance with the By-laws of the Corporation (the “**By-Laws**”).

(b) Subject to Section 6.4, the directors shall be divided with respect to the time for which they hold office into three classes, as nearly equal in number as possible and designated Class I, Class II and Class III. The initial division of the Board into classes shall be made by the Board consistent with the Plan. At each annual meeting of stockholders beginning with the meeting held on the First Annual Meeting Date, successors to the class of directors whose term expires at that annual meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders to be held in the third year following the year of their election. Subject to Section 6.4, if the number of directors is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director.

(c) Subject to Section 6.4, a director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director’s earlier death, resignation, retirement or removal in accordance with Section 6.3.

(d) Unless and except to the extent that the By-Laws shall so require, the election of directors need not be by written ballot.

(e) During the Initial Period, the number of directors constituting the Board shall be set at five (5). As of the Effective Date, the directors of the Corporation shall be the following persons, with the following classifications, each to hold office until the expiration of his or her term or until his or her successor has been elected and qualified (subject to Section 6.3): (i) one Class I Director with a term expiring on the First Annual Meeting Date, which director shall be the CEO of the Corporation and who shall be appointed as the Class I Director by the Class II and Class III Directors at such time as the CEO has been appointed by the Corporation, provided, that during any period in which an interim CEO is serving the Corporation, such fifth director shall be a person acceptable to the Wasserstein Holders and the Requisite Principal Holders, (ii) two Class II Directors with a term expiring on the Second Annual Meeting Date, one of whom shall be a Wasserstein Designated Director and one of whom shall be a Requisite Holder Designated Director; and (iii) three Class III Directors with a term expiring on the Third Annual Meeting Date, one of whom shall be a Wasserstein Designated Director and one of whom shall be a Requisite Holder Designated Director.

During the Initial Period, any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled with respect to any Wasserstein Designated Director by the designation of the Wasserstein Holders, and such director shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal. During the Initial Period, any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled with respect to any Requisite Holder Designated Director by the designation of the Requisite Principal Holders, and such director shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

Section 6.2 Newly Created Directorships and Vacancies. Subject to Section 6.1 and Section 6.4, newly created directorships resulting from an increase in the number of directors following the Initial Period and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely by a majority vote of the directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders, and any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

Section 6.3 Removal. Subject to Section 6.4, any or all of the directors may be removed from office at any time, but only for cause and only by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. For purposes of this Section 6.3, "cause" shall mean (i) a director's theft or embezzlement or attempted theft or embezzlement of money, or tangible or intangible assets or property; (ii) a

director's violation of any law (whether foreign or domestic), which results in a felony indictment or similar judicial proceeding; or (iii) a director's gross negligence, willful misconduct or knowing violation of law, in the performance of the director's duties; provided, however, the director shall have been given a reasonable period to cure any alleged cause under clause (iii) above (other than willful misconduct) prior to the taking of a vote on the director's removal.

Section 6.4 Preferred Stock – Directors. Notwithstanding any other provision of this ARTICLE VI, and except as otherwise required by law, following the Initial Period, whenever the holders of one or more series of Preferred Stock shall have, under the terms of this Certificate (including any Preferred Stock Designation), the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of Preferred Stock as set forth in this Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this Article VI unless expressly provided by such terms. During the Initial Period, the holders of any series of Preferred Stock shall have no right to vote separately by class or series to elect one or more directors, other than the right, if any, given to such holders under the terms of this Certificate (including any Preferred Stock Designation) to vote with the holders of Shares of Common Stock in the election of directors generally.

During any period following the Initial Period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of this Article, then upon the commencement, and for the duration, of the period during which such right continues: (i) the then total authorized number of directors of the Corporation shall automatically be increased by such specified number of additional directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors pursuant to the terms of the designation of the Board; and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to such provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total and authorized number of directors of the Corporation shall be reduced accordingly.

Section 6.5 Protective Provisions. The Corporation shall not, without first obtaining the affirmative vote of directors representing of at least eighty-percent (80%) of the number of directors constituting the Board (assuming no vacancies on the Board):

- (a) Enter into or effect a Liquidation Transaction;
- (b) Purchase or redeem (or permit any of its Subsidiaries to purchase or redeem) or pay or declare any dividend or make any distribution on, any Shares of capital stock of the Corporation other than (i) mandatory redemptions of or noncumulative dividends or

noncash distributions on the Preferred Stock as expressly authorized herein (including any Preferred Stock Designation), or (ii) repurchases of Shares of capital stock from former employees, officers, directors, consultants or other persons who performed services for this Corporation or any of its Subsidiaries in connection with the cessation of such employment or provisions of services (A) as provided in any compensation or incentive plan, program or agreement approved by the Board (or any agreement made pursuant to a plan or program so approved) at the price provided for therein, (B) at the lower of the original purchase price or the then-current fair market value thereof, or (C) pursuant to a right of first refusal;

(c) Enter into transactions involving (i) the acquisition by the Corporation or any of its Subsidiaries of any entity controlled by, or material assets owned by, an Affiliate of the Corporation, (ii) the sale of material assets of the Corporation or any of its Subsidiaries to an Affiliate of the Corporation, or (iii) the payment of a fee to an Affiliate of the Corporation for the provision of services to Corporation or any of its Subsidiaries; provided, however, that this section shall not apply (x) the Management Services Agreement between the Corporation and Wasserstein & Co. dated as of the date hereof, as in effect on the date hereof and any transactions expressly provided for therein, including the payment of any amounts or fees thereunder, (y) the payment of any amounts pursuant to the terms of this Certificate, and (z) transactions between or among the Corporation and its wholly-owned Subsidiaries or between or among wholly-owned Subsidiaries of the Corporation;

(d) Increase or decrease the size of the Board following the Initial Period;

(e) Issue any additional Shares of capital stock of the Corporation or any obligations or securities convertible into or exercisable or exchangeable by its terms for any Shares of capital stock of the Corporation (other than Excluded Securities);

(f) Acquire any interest in any Person or business (whether by purchase of assets, purchase of equity securities, merger or otherwise) or enter into any joint venture or make any investment in another Person (other than a wholly owned Subsidiary of the Corporation), in each case involving consideration in the amount of \$25 million or more

(g) Incur or assume any indebtedness in a principal amount of \$25 million or more, either individually or in the aggregate, or enter into any other payment obligation outside the ordinary course of business that commits the Corporation or any Subsidiary of the Corporation to pay or repay \$25 million or more, either individually or in the aggregate; or

(h) Amend this Certificate or the By-Laws of the Corporation.

(i) The provisions of this Section 6.5 shall terminate upon on the earlier of (i) such time as the Common Stock of the Corporation becomes required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, and (ii) the affirmative vote of the Required Stockholders.

ARTICLE VII.
BY-LAWS

In furtherance and not in limitation of the powers conferred upon it by law, unless (a) stockholder approval is expressly required by the By-Law provision being repealed, amended or otherwise modified, or (b) the proposed amendment or other modification would be inconsistent with a provision of the By-Laws expressly requiring stockholder approval, the Board shall have (subject to Section 6.5 hereof) the power to adopt, amend, alter or repeal the By-Laws. Subject to Section 6.5(h) hereof, the By-Laws also may be adopted, amended, altered or repealed by the affirmative vote or written consent of the stockholders.

ARTICLE VIII.
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitations of Personal Liability. No person who is or was a director of the Corporation after the date hereof shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted by the DGCL as the same exists or hereafter may be amended. If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the liability of directors, then the liability of any such director to the Corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended. Any repeal or amendment of this Section 8.1 by the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of any such director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal of amendment or adoption of such inconsistent provision.

Section 8.2 Right to Indemnification. Each Person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***proceeding***"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter a "***Covered Person***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be amended, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding; provided, however, that, except as provided in Section 8.4 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify a Covered

Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

Section 8.3 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.2, a Covered Person shall also have the right to be paid by the Corporation the expenses (including, without limitation, attorneys' fees) incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an "***advancement of expenses***"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Covered Person, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "***undertaking***"), by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "***final adjudication***") that such Covered Person is not entitled to be indemnified for such expenses under this ARTICLE VIII or otherwise.

Section 8.4 Right of Indemnitee to Bring Suit. If a claim under Section 8.2 or Section 8.3 is not paid in full by the Corporation within sixty (60) days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Covered Person may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Covered Person shall also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, shall be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this ARTICLE VIII or otherwise shall be on the Corporation.

Section 8.5 Non-Exclusivity of Rights. The rights provided to Covered Persons pursuant to this ARTICLE VIII shall not be exclusive of any other right which any Covered Person may have or hereafter acquire under applicable law, this Certificate, the By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.6 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise that is affiliated with the Corporation against any expense, liability or loss to the maximum extent permitted under the DGCL.

Section 8.7 Indemnification of Other Persons. This ARTICLE VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to Persons other than Covered Persons. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other Person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this ARTICLE VIII with respect to the indemnification and advancement of expenses of Covered Persons under this ARTICLE VIII.

Section 8.8 Amendments. Any repeal or amendment of this ARTICLE VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of this Certificate inconsistent with this ARTICLE VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Covered Persons on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.9 Certain Definitions. For purposes of this ARTICLE VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a Person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service that imposes duties on, or involves services by, a Person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a Person who acted in good faith and in a manner such Person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

Section 8.10 Contract Rights. Subject to Section 8.8 hereof, the rights provided to Covered Persons pursuant to this ARTICLE VIII shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Covered Person’s heirs, executors and administrators.

Section 8.11 Severability. If any provision or provisions of this ARTICLE VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this ARTICLE VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this ARTICLE VIII (including, without limitation, each such portion of this ARTICLE VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX.
[RESERVED]

ARTICLE X.
AMENDMENT OF CERTIFICATE OF INCORPORATION

Subject to Section 6.5(h), the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate (including any Preferred Stock Designation), in the manner now or hereafter prescribed by this Certificate, the By-Laws and the DGCL; and except as set forth in ARTICLE VIII, all rights, preferences and privileges herein conferred upon stockholders, directors or any other Persons by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article.

Notwithstanding anything contained herein to the contrary, (i) the provisions of Section 4.4, Section 6.5, this Article X and the definitions of “Excluded Securities”, “Liquidation Transaction”, “New Securities”, “Securities” and “Required Stockholders” may not be amended or modified without the affirmative vote of the Required Stockholders, and (ii) during the Initial Period, the provisions of Section 6.1(e) may not be amended or modified without the affirmative vote of the Wasserstein Holders and the affirmative vote of the Requisite Principal Holders.

ARTICLE XI.
SECTION 203

The Corporation elects not to be governed by Section 203 of the DGCL.

ARTICLE XII.
DEFINITIONS

Section 12.1 Definitions. As used in this Certificate, the following definitions will apply:

“*Affiliate*” means, with respect to any Person, (a) any other Person of which securities or other ownership interests representing more than fifty percent (50%) of the voting interests are, at the time such determination is being made, owned, Controlled or held, directly or indirectly, by such Person or (b) any other Person which, at the time such determination is being made, is Controlling, Controlled by or under common Control with, such Person. As used herein, “*Control*”, whether used as a noun or verb, refers to the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a Person, whether through the ownership of voting securities or otherwise.

“**Effective Date**” means the date of the acceptance for filing of this Certificate with the Secretary of State of the State of Delaware.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder, or any successor statute.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, or any successor statute.

“**Excluded Securities**” means (a) Securities issued or issuable: (i) upon conversion of shares of Preferred Stock or upon conversion, exercise or exchange of other Securities; (ii) to officers, directors or employees of, or consultants to, the Corporation pursuant to compensation or incentive plans, programs or agreements approved by the Board provided that such Securities, in the aggregate, equal less than 10% of the outstanding shares of Common Stock of the Corporation as of such date on a fully diluted basis, subject to adjustment for stock dividends, stock splits, combinations, recapitalizations and similar events; (iii) in consideration for a transaction duly approved by the Board which, when combined with any related transactions, does not result in the issuance of capital stock representing more than 5% of the then outstanding Shares; (iv) in a subdivision, dividend, distribution, recapitalization, reclassification, reorganization, merger, consolidation or purchase of assets; or (v) in a transaction subject to a registration statement filed under the Securities Act; or (b) any right, option or warrant to acquire any securities described in the foregoing subsections (i) through (v) of the definition of Excluded Securities.

“**First Annual Meeting Date**” means the date of the annual meeting of the holders of Common Stock of the Corporation first occurring after the Effective Date.

“**Initial Period**” means the period from and including the Effective Date to the day following the Third Annual Meeting Date.

“**Liquidation Transaction**” means (a) the sale, transfer or other disposition of all or substantially all of the Corporation’s and its Subsidiaries’ assets in one transaction or a series of related transactions, (b) the merger or consolidation of the Corporation with or into another entity (except a merger or consolidation in which the holders of capital stock of this corporation immediately prior to such merger or consolidation continue to hold at least 75% of the voting power of the capital stock of the corporation or the surviving or acquiring entity), (c) the issuance by the Corporation, in one transaction or a series of related transactions, of its Shares of Common Stock, to a Person or group of affiliated Persons (other than an underwriter of the Corporation’s securities) if, after giving effect to such issuance, such Person or group of affiliated Persons would hold 50% or more of the outstanding voting Shares of the Corporation based upon voting power of such Shares or (d) the liquidation, dissolution or winding up of the Corporation; provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this corporation’s incorporation or to create a holding company that will be owned in substantially the same proportions by the Persons who held the Corporation’s securities immediately prior to such transaction.

“*New Securities*” means any Securities of the Corporation issued or issuable after the date hereof, other than Excluded Securities:

“*Person*” means any individual, firm, corporation, company, partnership, trust, incorporated or unincorporated association, limited liability company, joint venture, joint stock company, government (or an agency or political subdivision thereof) or other entity of any kind, and shall include any successor (by merger or otherwise) of any such entity.

“*Principal Holders*” means the parties to (excluding the Wasserstein Holders and the Corporation), or the entities deemed parties to, the Support Agreement dated March 27, 2011, as amended, as of immediately prior to the Effective Date.

“*Required Stockholders*” means (a) from the date hereof through January 31, 2016, holders of Shares representing 80% or more of the voting power of the outstanding Shares of Common Stock, and (b) thereafter, holders of Shares Representing at least 55% of the voting power of the outstanding Shares.

“*Requisite Holder Designated Director*” means the directors designated by the Requisite Principal Holders in connection with the Plan, and any director replacing either of them (or their replacement) pursuant to Section 6.1(e) hereof.

“*Requisite Principal Holders*” means collectively, at the time of determination, holders of a majority of the Common Stock held by the Principal Holders in the aggregate (so long as each such Principal Holder is at the time of determination a holder of Common Stock of the Corporation).

“*Second Annual Meeting Date*” means the date of the annual meeting of the holders of Common Stock of the Corporation first occurring after the First Annual Meeting Date (and not earlier than eleven (11) months thereafter).

“*Securities*” means, with respect to the Corporation, (a) shares of Common Stock or Preferred Stock of the Corporation, (b) all securities convertible into or exchangeable for Common Stock or Preferred Stock of the Corporation, and (c) all options, warrants, and other rights to purchase or otherwise acquire from the Corporation shares of Common Stock or Preferred Stock of the Corporation.

“*Securities Act*” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Subsidiary*” means, with respect to any Person, any corporation, association, partnership, limited liability company or other business entity of which 50% or more of the total voting power of equity interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, representatives or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person, or (c) one or more Subsidiaries of such Person.

“Third Annual Meeting Date” means the date of the annual meeting of the holders of Common Stock of the Corporation first occurring after the Second Annual Meeting Date (and not earlier than eleven (11) months thereafter).

“Wasserstein Designated Director” means the directors designated by the Wasserstein Holders in connection with the Plan, and any director replacing either of them (or their replacement) pursuant to Section 6.1(e) hereof.

“Wasserstein Holders” means collectively, Wasserstein Partners, LP, any Affiliate of Wasserstein Partners, LP, and any limited partners of such Affiliates, in each case, so long as such entity is at the time of determination a holder of Common Stock of the Company.