

RECORDATION FORM COVER SHEET  
PATENTS ONLY

Atty Ref/Docket No.: 2552.001US1

Patent and Trademark Office

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To the Director of the U.S. Patent and Trademark Office: Please record the attached original documents or copy thereof.

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1. Name of conveying party(ies):

Calisolar Inc.

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment☐ Merger☐ Security Agreement ☒ Change of Name☐ Other

Execution Date: February 23, 2012

2. Name and address of receiving party(ies):

Name: Silicor Materials Inc.

Street Address: 530 Lytton Ave., 2nd Floor

City: Palo Alto State: CA Zip: 94301Country: United States of AmericaAdditional name(s) & address(es) attached? ☐ Yes  
☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

B. Patent No.(s)

See Appendix A

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Gary J. Speier

Address:

Schwegman, Lundberg &amp; Woessner, P.A.

P.O. Box 2938

Minneapolis, MN 55402--0938

6. Total number of applications and patents involved: 17. Total fee (37 CFR 3.41):\$ 1040.00☐ Enclosed☒ Authorized to be charged to deposit account  
19-0743

8. Please charge any additional fees or credit any over payments to our Deposit Account No.: 19-0743

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**DO NOT USE THIS SPACE**

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Gary J. Speier/Reg. No. 45,458/ Gary J. Speier /11/15/12

Name of Person Signing

Signature

Date

Total number of pages including cover sheet: 14

Mail documents to be recorded with required cover sheet information to:

**Commissioner of Patents and Trademarks****Mail Stop Assignment Recordation Services****P.O. Box 1450****Alexandria, VA 22313-1450**

CH \$1040.00 190743 13017786

**PATENT****700496693****REEL: 029405 FRAME: 0900**

## Appendix A

Attorney Reference No.	Application No.	Filing Date	Patent No.	Issue Date
2552.001US1	12/288,857	10/23/2008	7,727,503	06/01/2010
2552.001US2	12/784,576	05/21/2010	7,883,680	02/08/2011
2552.001US3	13/017,786	01/31/2011		
2552.001US4	13/532,083	06/25/2012		
2552.001WO1	PCT/CA2007/00574	04/04/2007		
2552.002PRV	60/894,587	03/13/2007		
2552.002US1	12/530,993	03/03/2010		
2552.002WO1	PCT/CA2008/000499	03/13/2008		
2552.003PRV	60/951,374	07/23/2007		
2552.003US1	12/670,263	01/22/2010		
2552.003WO1	PCT/CA2008/001345	07/23/2008		
2552.004PRV	60/952,732	07/30/2007		
2552.006PRV	60/977,249	10/03/2007		
2552.006US1	12/244,839	10/03/2008	7,959,730	06/14/2011
2552.006US2	13/158,626	06/13/2011	8,273,176	09/25/2012
2552.006US3	13/625,348	09/24/2012		
2552.021US1	12/729,561	03/23/2010		
2552.021US2	13/494,710	06/16/2012		
2552.021WO1	PCT/CA2010/001288	08/20/2010		
2552.022PRV	61/308,817	02/26/2010		
2552.022US1	12/716,889	03/03/2010		
2552.022WO1	PCT/CA2011/050111	02/25/2011		
2552.023US1	12/760,222	04/14/2010		
2552.023US2	13/494,717	06/12/2012		
2552.023WO1	PCT/CA2011/050196	04/13/2011		
2552.024US1	12/947,936	11/17/2010		

PATENT

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# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "CALISOLAR INC.", CHANGING ITS NAME FROM "CALISOLAR INC." TO "SILICOR MATERIALS INC.", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF FEBRUARY, A.D. 2012, AT 4:40 O'CLOCK P.M.

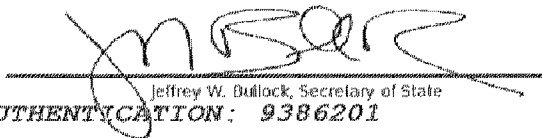
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

4153436 8100

120215451

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



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9386201

DATE: 02-23-12

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:46 PM 02/23/2012  
FILED 04:40 PM 02/23/2012  
SRV 120215451 - 4153436 FILE

CALISOLAR INC.

NINTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

Calisolar Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, 8 Del. C. §§ 101 *et seq.* (the "General Corporation Law") hereby certifies as follows:

1. The name of this corporation (the "Corporation") is "Calisolar Inc." and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on May 4, 2006. The name of the Corporation is being changed to "Silicor Materials Inc."
2. The Ninth Amended and Restated Certificate of Incorporation in the form of Exhibit A attached hereto has been adopted in accordance with the provisions of Sections 242, 245 and 228 of the General Corporation Law.
3. The text of the Eighth Amended and Restated Certificate of Incorporation as heretofore amended or supplemented is hereby restated and further amended to read in its entirety as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, this Ninth Amended and Restated Certificate of Incorporation has been signed as of February 23, 2012.

CALISOLAR INC.

By: /s/ John Beaver

Name: John Beaver

Title: Chief Financial Officer

PATENT

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**EXHIBIT A****FIRST**

The name of this corporation is Silicor Materials Inc. (the "Corporation").

**SECOND**

The address of the registered office of the Corporation in the State of Delaware is 615 South DuPont Highway, Dover, County of Kent, DE 19901, and the name of the registered agent at that address is National Corporate Research, Ltd., a Delaware Corporation.

**THIRD**

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

**FOURTH**

A. The aggregate number of shares that the Corporation shall have authority to issue is Five Hundred Fourteen Million Three Hundred Twenty Thousand Five Hundred Twenty-Five (514,320,525) divided into Five Hundred Thirteen Million Nine Hundred Seventy Thousand Three Hundred Five (513,970,305) shares of Common Stock, each with the par value of \$0.0001 per share (the "Common Stock"), and Three Hundred Fifty Thousand Two Hundred Twenty (350,220) shares of Preferred Stock, each with the par value of \$0.0001 per share (the "Preferred Stock"). The Preferred Stock may be issued in one or more series.

B. Three Hundred Fifty Thousand Two Hundred Twenty (350,220) of the authorized shares of Preferred Stock are hereby designated "Series D Preferred Stock" (the "Series D Preferred" or the "Preferred Stock").

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

1. Dividends.

(a) Omitted.

(b) Treatment of Common Stock. If the Board of Directors shall declare dividends out of funds legally available therefor in that calendar year, then such dividends shall be declared pro rata on the Common Stock on a pari passu basis according to the number of shares of Common Stock held by such holders. The Corporation shall make no Distribution (as defined below) to the holders of shares of Common Stock except in accordance with this Section D.1(b) of Article Fourth.

(c) Distribution. "Distribution" means the transfer of cash or property without consideration, whether by way of dividend (excluding stock dividends) or otherwise, or the purchase of shares of the Corporation (other than in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers or directors at a price not greater than the amount paid by such persons for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase or upon exercise of a right of first refusal approved by the Board of Directors) for cash or property.

(d) Consent to Certain Repurchases. As authorized by Section 402.5(c) of the General Corporation Law of California, Sections 502 and 503 of the General Corporation Law of California, to the extent otherwise applicable, shall not apply with respect to Distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers or directors at a price not greater than the amount paid by such person for such shares upon termination of their employment or services pursuant to agreements providing for the right of said repurchase or upon exercise of a right of first refusal, which agreements were authorized by the Board of Directors.

(e) The "Series D Consideration" of the Series D Preferred shall be \$1,000.00 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date).

## 2. Liquidation Rights.

(a) Liquidation Preference. In the event of any Liquidation (as defined below), whether voluntary or involuntary, holders of Preferred Stock shall be entitled to receive, prior and in preference to the holders of any other equity securities of the Corporation, out of the assets or surplus funds of the Corporation (following payment in full or provision having been made for all creditors of the Corporation), the following:

(i) Series D Preferred Liquidation Preference. With respect to the Series D Preferred, an amount equal to the aggregate amount of the Series D Consideration for the Series D Preferred plus any declared but unpaid dividends on each such share up to and including the final date of distribution (the "Series D Liquidation Preference").

(b) Insufficient Assets. If upon Liquidation, the assets to be distributed among the holders of the Series D Preferred are insufficient to permit the payment of the full Series D Liquidation Preference to the holders of the Series D Preferred, all assets of the Corporation legally available for distribution shall be distributed, first to the holders of the Series D Preferred (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) at the Series D Liquidation Preference pro rata (based on the Series D Liquidation Preference amounts of such shares) on a pari passu basis until such time as they have received their full Series D Liquidation Preference.

(c) Remaining Assets. After the payment to the holders of Preferred Stock of the full preferential amounts specified above, any remaining assets of the Corporation shall

be distributed pro rata among the holders of Common Stock based on the number of shares of Common Stock held by each holder.

(d) Liquidation. "Liquidation" means the occurrence of any of the following: (i) the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary; (ii) the merger or consolidation of the Corporation by means of any transaction or series of related transactions, provided that the applicable transaction shall not be deemed a Liquidation unless the Corporation's stockholders constituted immediately prior to such transaction do not hold more than fifty percent (50%) of the voting power of the surviving or acquiring entity immediately following such transaction; (iii) any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred; provided that a Liquidation shall not include any transaction or series of related transactions principally for bona fide equity financing purposes in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof; or (iv) a sale, exclusive license or other disposition, directly or indirectly, of all or substantially all of the assets of the Corporation or the sale, exclusive license or other disposition of all or substantially all of the assets of a subsidiary of the Corporation, which if held directly by the Corporation would constitute all or substantially all of the Corporation's assets, except in each case where such sale, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation. Notwithstanding the foregoing, none of the following shall be deemed to be a Liquidation: (A) a merger effected exclusively for the purpose of changing the domicile of the Corporation, (B) the sale or issuance of Series D Preferred or (C) any transaction or series of transactions which holders of a majority of Series D Preferred (voting as a single class) in writing approve or designate as not a Liquidation.

(e) Determination of Value if Proceeds Other than Cash. In any Liquidation, if the proceeds received by the Corporation or its stockholders are other than cash, their value will be deemed their fair market value. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by clause (ii) below:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the five (5) trading-day period ending three (3) trading days prior to the closing of the Liquidation;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty-five (25) trading-day period ending three (3) trading days prior to the closing of the Liquidation; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the majority of the votes of the Board of Directors, after consultation with the holders of such sufficient number of shares of Preferred Stock to approve any of the transactions set forth in Section D.5(a) of this Article Fourth hereto.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i) (A), (B) or (C), as applicable, to reflect the approximate fair market value thereof, as determined in good faith by the majority of the votes of the Board of Directors, after consultation with the holders of such sufficient number of shares of Preferred Stock to approve any of the transactions set forth in Section D.5(a) of this Article Fourth hereto.

3. Conversion.

(a) Right to Convert. The shares of Series D Preferred may not be converted at the option of the holders thereof.

(b) Automatic Conversion. Subject to the prior written approval of the holders of a majority of the outstanding shares of Series D Preferred, immediately upon the consummation of a firmly underwritten public offering of Common Stock pursuant to the Securities Act on Form S-1 (as defined in the Securities Act) or any successor form (other than a registration relating solely to a transaction under Rule 145 under the Securities Act (or any successor thereto) or to an employee benefit plan of the Corporation), or on such other form or pursuant to such other filings, as applicable, as may be required by The New York Stock Exchange, NASDAQ Global Market, London Stock Exchange or other comparable exchange or market (an "IPO"), each share of Series D Preferred shall automatically be converted into a number of shares of Common Stock that would result in the share of Series D Preferred receiving the same value per share (in the form of shares of Common Stock in the IPO valued at the public offering price in the IPO) as such share of Series D Preferred would have received had the aggregate value of all outstanding shares of Corporation capital stock (valued at the public offering price in the IPO) been distributed in a total liquidation in accordance with the provisions of Section D.2 of this Article Fourth as of the date of the IPO.

(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 the fair market value cash equivalent of such fractional share as determined in good faith by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. In the event of an automatic conversion pursuant to Section 3(b) above, 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 that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion 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.



The Corporation shall, as soon as practicable after delivery of the Preferred Stock certificate(s), issue and deliver to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled 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 or accumulated but unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made as of the date and time specified above, 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, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event 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 the sale of such securities.

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

(d) Adjustments for Reorganization, Merger, Consolidation or Sale of Assets. 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 a reorganization, merger or consolidation of the Corporation with or into another entity, or the sale of all or substantially all of the Corporation's properties and assets to any other person or entity (other than as provided for elsewhere in this Section 3 or a transaction subject to Section 2 above) then, as a part of such reorganization, merger, consolidation or sale, provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of the then outstanding Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of the successor entity resulting from such merger or consolidation or sale, to which a holder of Common Stock deliverable upon conversion of the Preferred Stock would have been entitled to receive upon such capital reorganization, merger consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights and interests of the holders of the then outstanding Preferred Stock after the reorganization, merger, consolidation or sale to the end that the provisions of this Section 3 shall be applicable after that event as nearly equivalent as may be practicable.

(e) Notices of Record Date. In the event that the Corporation shall propose at any time (i) to declare any dividend or distribution on 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; or (iii) to effect a Liquidation; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock written notice at least twenty (20) days prior to the record date or effective date for such event. The notice shall specify, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right or (ii) the effective date on which such reclassification or recapitalization or Liquidation is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reclassification, recapitalization or Liquidation, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed sent to such holder if deposited in the U.S. mail, postage prepaid, and addressed to such holder at such holder's address appearing on the books of the Corporation.

(f) 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 (including, without limitation, engaging in reasonable best efforts to obtain the requisite stockholder approval of any necessary amendment to this Seventh Amended and Restated Certificate of Incorporation) to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

4. Voting.

(a) Except as otherwise expressly provided herein or as required by law, the Preferred Stock shall be non-voting capital stock of the Corporation. The holders of Common Stock shall be voting and shall vote as a separate class. 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 plus the number of shares of Common Stock issuable upon the conversion of Convertible Securities) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote (voting together as a single class on an as-converted basis).

(b) Preferred Stock. Shares of Series D Preferred shall be non-voting other than in respect of its rights set forth in Section D.5 of this Article Fourth.

(c) Common Stock. Each holder of Common Stock shall be entitled to one (1) vote for each share thereof held.

(d) Election of Directors. The Corporation's Board of Directors shall be composed of up to six (6) members to be elected as follows:

(i) The holders of the Series D Preferred, voting separately as a single class shall be entitled to elect two (2) directors (the "Series D Directors");

(ii) the holders of the Series D Preferred held by any holder other than any investment fund affiliated with Hudson Capital Management (NY), L.P., voting separately as a single class, shall be entitled to elect one (1) director; and

(iii) the holders of Common Stock, voting separately as a single class, shall be entitled to elect three (3) directors.

Each of the Series D Directors' votes shall be equal to three (3) votes. Each of the other directors' votes shall be equal to one (1) vote.

(e) Removal of Directors. Any director elected pursuant to Section D.4(d) above may be removed with or without cause only by the affirmative vote of the holders of the shares of the class, series or classes of stock entitled to elect such director or directors.

(f) Vacancies. Any vacancies on the Board of Directors shall be filled by vote of the holders of the class, series or classes that elected the director pursuant to Section D.4(d) above whose absence created such vacancy.

(g) California Section 2115. To the extent that Section 2115 of the California Corporations Code makes Section 708 subdivisions (a), (b) and (c) of the California Corporations Code 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 Corporations Code.

## 5. Amendments and Changes.

(a) Approval by Series D Preferred. Notwithstanding Section D.4 above, so long as any Series D Preferred remain outstanding, the Corporation shall not, directly or indirectly, by amendment, merger, reclassification, consolidation or otherwise, without first obtaining the approval (by vote or written consent as provided by law) of at least a majority of the Series D Preferred then outstanding, voting separately:

(i) authorize, create or issue any equity security of the Corporation;

(ii) issue any debt securities or incur any indebtedness for borrowed monies;

(iii) amend, alter, repeal or waive any provision of the certificate of incorporation or the bylaws of the Corporation (whether by merger, consolidation or otherwise);

(iv) increase or decrease the authorized number of shares of any class or series of Common Stock or Preferred Stock of the Corporation;

(v) redeem or repurchase shares of the Corporation's or any of its subsidiaries' stock or securities except in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers or directors upon termination of their employment or services pursuant to agreements providing for the right of said repurchase;

(vi) take any action (excluding a pledge of or a grant of a security interest in the Corporation's intellectual property) which results in a sale, lease, or exclusive license of all or substantially all of the material intellectual property of the Corporation;

(vii) declare a dividend or make a distribution with regard to any security of the Corporation;

(viii) enter into any initial public offering of the Corporation's equity securities; or

(ix) consummate any Liquidation.

(b) Matters Requiring Approval by the Board of Directors. Except as otherwise set forth below, all actions taken by the Board of Directors on behalf of the Corporation shall require approval by a majority of votes held by the members of the Board of Directors; provided, however, that the vote of a majority of the votes held by the directors, excluding the director(s) representing any Major Investor (as defined below) who is an interested party to the transaction described herein, shall be required to effect any commercial agreement providing for payments in excess of \$10,000,000, whether in cash or other assets (the value of which shall be determined by the Board of Directors in good faith), between the Corporation or any subsidiary of the Corporation on the one hand and any Major Investor or its affiliates on the other hand. For the purposes of this Section 5(f) the term "Major Investor" shall mean any stockholder that, together with such stockholder's affiliates, holds at least five percent (5%) of the Corporation's Preferred Stock on an as-converted, fully-diluted basis.

6. Redemption. The Preferred Stock is not redeemable.

7. Notices. Any notice required by the provisions of this Article FOURTH to be given to the holders of Preferred Stock shall be in writing and shall be deemed given if deposited in the United States mail, postage prepaid, if deposited with a nationally recognized overnight courier, or if personally delivered, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

## FIFTH

Subject to any additional vote required by this Ninth Amended and Restated Certificate of Incorporation, the Board of Directors shall have the power to adopt, amend and repeal the bylaws of the Corporation (except insofar as the bylaws of the Corporation as adopted by action of the stockholders of the Corporation shall otherwise provide). Any bylaws made by the directors under the powers conferred hereby may be amended or repealed by the directors or by the stockholders, and the powers conferred in this Article FIFTH shall not abrogate the right of the stockholders to adopt, amend and repeal bylaws.

## SIXTH

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

## SEVENTH

Subject to the provisions set forth in this Ninth Amended and Restated Certificate of Incorporation, the Corporation reserves the right to amend the provisions in this Ninth Amended and Restated Certificate of Incorporation and in any certificate amendatory hereof in the manner now or hereafter prescribed by law and this Ninth Amended and Restated Certificate of Incorporation, and all rights conferred on stockholders or others hereunder or thereunder are granted subject to such reservation.

## EIGHTH

A. To the fullest extent permitted by the Delaware Corporate Law as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the Delaware Corporate Law is amended after the filing of this Ninth Amended and Restated Certificate of Incorporation 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 Corporate Law as so amended.

B. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding whether criminal, civil, administrative or investigative, by reason of the fact that he/she, his/her testator or intestate is or was a director, officer, employee or agent of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation to the same extent as permitted by law.

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

D. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware Corporate Law.

#### NINTH

The Corporation expressly elects not to be governed by Section 203 of the Delaware Corporate Law.

#### TENTH

The Corporation renounces 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, transaction or interest 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, transaction or interest 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.