
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended **February 28, 2019**

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number: **333-161943**

BETTER CHOICE COMPANY INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

83-4284557

(I.R.S. Employer Identification No.)

81 Prospect Street, Brooklyn, NY 11201

(Address of principal executive offices) (Zip Code)

(646) 846-4280

(Registrant's telephone number, including area code)

Sport Endurance, Inc.

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

(Check One):

Large Accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the latest practicable date: 2,841,210 shares of \$0.001 par value common stock outstanding as of April 9, 2019.

BETTER CHOICE COMPANY INC.
(FORMERLY SPORT ENDURANCE, INC.)
FORM 10-Q

Quarterly Period Ended February 28, 2019

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EXPLANATORY NOTE

We were incorporated in the State of Nevada in 2001 under the name Cayenne Construction, Inc., and in 2009 changed our name to Sport Endurance, Inc. Effective March 11, 2019, we changed our name to Better Choice Company Inc. after reincorporating in Delaware. Unless otherwise noted, references in this quarterly report on Form 10-Q (the “Report”) to the “Company,” “we,” “our” or “us” means Better Choice Company Inc. (formerly Sport Endurance, Inc.).

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements.

BETTER CHOICE COMPANY INC.
(FORMERLY SPORT ENDURANCE, INC.)
CONDENSED BALANCE SHEETS

	February 28, 2019 (Unaudited)	August 31, 2018
ASSETS		
Current assets		
Cash and cash equivalents	\$ 107,936	\$ 199,674
Prepaid expenses	41,082	-
Inventory	-	9,402
Total current assets	149,018	209,076
Investment in TruPet	2,200,000	-
Total Assets	<u>\$ 2,349,018</u>	<u>\$ 209,076</u>
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities		
Accounts payable and accrued liabilities	\$ 104,912	\$ 106,445
Accrued interest, related party	1,657	-
Dividends payable	98,595	20,280
Derivative liability	2,432,459	2,317,412
Accrued officer salary	108,000	140,000
Convertible notes, net of unamortized debt discounts of \$0 and \$752,990, respectively	-	274,214
Total current liabilities	2,745,623	2,858,351
Commitments and contingencies	-	-
Stockholders' deficit		
Preferred stock, \$0.001 par value, 20,000,000 shares authorized, 16,294,000 and 19,194,000 shares undesignated and unissued as of February 28, 2019 and August 31, 2018, respectively		
Series A Preferred stock, \$0.001 par value, 1,000 shares designated, 0 and 1,000 shares issued and outstanding as of February 28, 2019 and August 31, 2018, respectively	-	1
Series B Convertible Preferred stock, \$0.001 par value, 805,000 shares designated, 0 and 803,969.73 shares issued and outstanding as of February 28, 2019 and August 31, 2018, respectively	-	804
Series E Convertible Preferred stock, \$0.001 par value, 2,900,000 shares designated, 2,693,678 and 0 shares issued and outstanding as of February 28, 2019 and August 31, 2018, respectively	2,693	-
Common stock, \$0.001 par value, 580,000,000 shares authorized 2,699,502 and 3,064,763 shares issued and outstanding as of February 28, 2019 and August 31, 2018, respectively	2,700	3,065
Additional paid-in capital	5,318,132	3,406,146
Accumulated deficit	(5,720,130)	(6,059,291)
Total stockholders' deficit	(396,605)	(2,649,275)
Total liabilities and stockholders' deficit	<u>\$ 2,349,018</u>	<u>\$ 209,076</u>

See accompanying notes to the unaudited condensed financial statements.

BETTER CHOICE COMPANY INC.
(FORMERLY SPORT ENDURANCE, INC.)
UNAUDITED CONDENSED STATEMENTS OF OPERATIONS

	For the Three Months Ended February 28, 2019	For the Three Months Ended February 28, 2018	For the Six Months Ended February 28, 2019	For the Six Months Ended February 28, 2018
Revenue	\$ -	\$ 261	\$ -	\$ 475
Cost of goods sold	-	184	-	211
Gross profit	-	77	-	264
Operating expenses:				
Selling, general and administrative	388,905	66,479	536,428	151,722
Total operating expenses	388,905	66,479	536,428	151,722
Operating loss	(388,905)	(66,402)	(536,428)	(151,458)
Other income (expense):				
Interest expense, net	(368)	(768,129)	(133,913)	(449,136)
Excess value of warrants liability over net proceeds of sale of common stock at inception	(3,675,385)	-	(3,675,385)	-
Gain on exchange of debt and equity	-	139,323	472,267	139,323
Gain (loss) on change in fair value of derivative liability	3,898,599	(256,286)	4,212,620	(600,923)
Total other income (expense), net	222,846	(885,092)	875,589	(910,736)
Net (loss) income before tax	(166,059)	(951,494)	339,161	(1,062,194)
Provision for income tax	-	-	-	-
Net (loss) income	(166,059)	(951,494)	339,161	(1,062,194)
Preferred stock dividend	(68,787)	-	(109,934)	-
Net (loss) income available to common shareholders	\$ (234,846)	\$ (951,494)	\$ 229,227	\$ (1,062,194)
Net loss (income) per share – basic	\$ (0.09)	\$ (0.31)	\$ 0.08	\$ (0.35)
Net loss (income) per share - diluted	\$ (0.09)	\$ (0.31)	\$ 0.06	\$ (0.35)
Weighted average shares outstanding - basic	2,724,359	3,039,160	2,883,911	3,027,393
Weighted average shares outstanding – diluted	2,724,359	3,039,160	5,449,488	3,027,393

See accompanying notes to the unaudited condensed financial statements.

BETTER CHOICE COMPANY INC.
(FORMERLY SPORT ENDURANCE, INC.)
UNAUDITED CONDENSED STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT

	Preferred Stock Series A		Preferred Stock Series B		Preferred Stock Series E		Common Stock		Paid-In Capital	Subscriptions Receivable	Accumulated Deficit	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount				Equity (Deficit)
Balance, August 31, 2017	1,000	\$ 1	-	\$ -	-	\$ -	3,008,730	\$ 3,009	\$ 1,927,960	\$ (5,372)	\$ (3,108,472)	\$ (1,182,874)
Conversion of notes payable and accrued interest	-	-	-	-	-	-	17,628	18	78,429	-	-	78,447
Net loss for the period	-	-	-	-	-	-	-	-	-	-	(110,700)	(110,700)
Balance, November 30, 2017	1,000	1	-	-	-	-	3,026,358	3,027	2,006,389	(5,372)	(3,219,172)	(1,215,127)
Conversion of notes payable and accrued interest	-	-	-	-	-	-	38,405	38	149,460	-	-	149,498
Settlement of derivative liabilities	-	-	-	-	-	-	-	-	333,947	-	-	333,947
Net loss for the period	-	-	-	-	-	-	-	-	-	-	(951,494)	(951,494)
Balance, February 28, 2018	1,000	\$ 1	-	\$ -	-	\$ -	3,064,763	\$ 3,065	\$ 2,489,796	\$ (5,372)	\$ (4,170,666)	\$ (1,683,176)

See accompanying notes to the unaudited condensed financial statements.

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	Preferred Stock Series A		Preferred Stock Series B		Preferred Stock Series E		Common Stock		Paid-In Capital	Subscriptions Receivable	Accumulated Deficit	Total Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount				Equity (Deficit)
Balance, August 31, 2018	1,000	\$ 1	803,970	\$ 804	-	\$ -	3,064,763	\$ 3,065	\$ 3,406,146	\$ -	\$ (6,059,291)	\$ (2,649,275)
Exchange of notes, interest, Series B Preferred and warrants with Series E Preferred Stock	-	-	(803,970)	(804)	2,846,356	2,846	-	-	2,019,920	-	-	2,021,962
Purchase and retirement of common stock	-	-	-	-	-	-	(1,048,904)	(1,049)	(26,222)	-	-	(27,271)
Preferred stock dividend	-	-	-	-	-	-	-	-	(41,147)	-	-	(41,147)
Net income for the period	-	-	-	-	-	-	-	-	-	-	505,220	502,220
Balance, November 30, 2018	1,000	-	-	-	2,846,356	2,846	2,015,859	2,016	5,358,697	-	(5,554,071)	(190,511)
Fair value of vested stock options	-	-	-	-	-	-	-	-	51,660	-	-	51,660
Purchase and retirement of common stock	-	-	-	-	-	-	(935,897)	(936)	(23,397)	-	-	(24,333)
Sale of common stock, net of issuance costs	-	-	-	-	-	-	1,425,641	1,426	2,655,673	-	-	2,657,099
Conversion of Series A Preferred stock to Common Stock	(1,000)	(1)	-	-	-	-	115	-	1	-	-	-
Conversion of Series E Preferred stock to Common Stock	-	-	-	-	(152,678)	(153)	193,784	193	(41)	-	-	-
Fair value of warrants issued along with sale of common stock allocated to paid-in capital	-	-	-	-	-	-	-	-	(2,655,673)	-	-	(2,655,673)
Preferred stock dividend	-	-	-	-	-	-	-	-	(68,787)	-	-	(68,787)
Net loss for the period	-	-	-	-	-	-	-	-	-	-	(166,059)	(166,059)
Balance, February 28, 2019	-	\$ -	-	\$ -	2,693,678	\$ 2,693	2,699,502	\$ 2,700	\$ 5,318,132	\$ -	\$ (5,720,130)	\$ (396,605)

See accompanying notes to the unaudited condensed financial statements.

**BETTER CHOICE COMPANY INC.
(FORMERLY SPORT ENDURANCE, INC.)
UNAUDITED CONDENSED STATEMENTS OF CASH FLOWS**

	For the Six Months Ended February 28, 2019	For the Six Months Ended February 28, 2018
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income (loss)	\$ 339,161	\$ (1,062,194)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Gain on exchange transaction	(472,267)	-
Change in fair value of derivative liabilities	(4,212,620)	600,923
Amortization of discount on convertible debt	118,707	397,811
Fair value of vested stock options	51,660	-
Excess value of warrants liability over net proceeds of sale of common stock at inception	3,675,385	-
Gain on note exchange		(139,323)
Changes in operating assets and liabilities:		
Prepaid expenses	(41,082)	-
Inventory	9,402	211
Accrued officer salary	(32,000)	40,000
Interest payable - related party	1,657	1,013
Accounts payable and accrued liabilities	64,764	(4,454)
Net cash used in operating activities	(497,233)	(166,013)
CASH FLOWS FROM INVESTING ACTIVITIES		
Deposit made on investment in TruPet	(2,200,000)	-
Net cash used in investing activities	(2,200,000)	-
CASH FLOWS FROM FINANCING ACTIVITIES		
Cash paid for the purchase of common stock	(51,604)	-
Cash from sale of common stock, net of costs	2,657,099	-
Proceeds from notes payable - related party	-	35,500
Repayments of notes payable - related party	-	(100,000)
Proceeds from convertible debt	-	482,500
Net cash provided by financing activities	2,605,495	418,000
Net (decrease) increase in cash and cash equivalents	(91,738)	251,987
Cash and cash equivalents at beginning of period	199,674	1,442
Cash and cash equivalents at end of period	<u>\$ 107,936</u>	<u>\$ 253,429</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Interest paid	\$ -	\$ 1,087
Income taxes paid	\$ -	\$ -
NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Common stock issued for conversion of notes payable and accrued interest	\$ -	\$ 84,956
Preferred Stock Series E issued for cancellation of convertible notes payable, accrued interest, Series B Preferred Stock and warrants	\$ 2,022,766	\$ -
Conversion of Series A Preferred Stock to common stock	\$ 1	\$ -
Conversion of Series E Preferred Stock to common stock	\$ 153	\$ -
Discount on notes payable due to beneficial conversion feature	\$ -	\$ 891,168
Settlement of derivative	\$ 2,003,390	\$ 476,936
Accrued interest capitalized into principal of convertible notes payable	\$ -	\$ 15,823
Fair value of warrants issued with sale of common stock allocated to additional paid in capital	\$ 2,655,673	\$ -
Accrued preferred stock dividends	\$ 108,843	\$ -

See accompanying notes to the unaudited condensed financial statements.

Better Choice Company Inc.
(Formerly Sport Endurance, Inc.)
Notes to Condensed Financial Statements
(Unaudited)

Note 1 – Nature of Business and Significant Accounting Policies

Nature of Business

We were incorporated in the State of Nevada in 2001 under the name Cayenne Construction, Inc., and in 2009 changed our name to Sport Endurance, Inc. Effective March 11, 2019, we changed our name to Better Choice Company Inc. after reincorporating in Delaware.

The Company previously marketed for sale three sport nutritional products which it suspended in March 2018. On March 14, 2018, the Company, through its wholly-owned subsidiary Yield Endurance, Inc. (“Yield”), entered into a series of agreements under which Yield borrowed \$5 million of bitcoin (“BTC”). The Company simultaneously entered into transactions with Madison Partners LLC and Prism Funding Co. LP to lend the BTC to third parties. On August 21, 2018, the Company entered into a series of restructuring agreements to unwind the BTC transactions thereby exiting the BTC and cryptocurrency markets.

Effective March 11, 2019, Sport Endurance, Inc. merged into its wholly-owned subsidiary, Better Choice Company Inc., a Delaware corporation. As a result, the name of Sport Endurance, Inc. was changed to Better Choice Company Inc. Pursuant to the merger, each outstanding share of common stock of Sport Endurance, Inc. converted into one share of common stock of Better Choice Company Inc. and each outstanding share of Series E Convertible Preferred Stock (the “Series E”) of Sport Endurance, Inc. converted into one share of Series E Convertible Preferred Stock of Better Choice Company Inc.

On December 17, 2018, the Company made a \$2,200,000 investment in TruPet LLC, an online seller of pet foods, flea and tick products, pet nutritional products and related pet supplies. On February 2, 2019 and February 29, 2019, respectively, the Company entered into definitive agreements to acquire the remainder of TruPet LLC and all of the outstanding shares of Bona Vida, Inc., an emerging hemp based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space. The definitive agreements are based on various conditions being met including completion of a financing. While the Company believes it is close to completing the financing and closing the acquisitions, no assurances can be given that we will close these transactions.

On March 14, 2019, the Company filed a Certificate of Amendment of Certificate of Incorporation (the “Amendment”) with the Delaware Secretary of State to effect a one-for-26 reverse split of the Company’s common stock. The Amendment took effect on March 15, 2019. No fractional shares will be issued or distributed as a result of the Amendment. These financial statements give retroactive effect to the reverse stock split for all periods presented, unless otherwise specified.

Our auditors note that the absence of revenues and operations, in the audit report for the year ended August 31, 2018 dated December 21, 2018, is a going concern. The going concern statement opinion issued by the independent auditors is the result of a lack of operations and working capital.

The Company cannot pay its short-term liabilities and will need to raise capital which concerned the independent auditors because there is insufficient cash for operations for the next 12 months. If we cannot raise sufficient capital, we will cease operations. See Note 2, “Going Concern” for more information.

Basis of Presentation

The accompanying unaudited condensed financial statements of the Company, have been prepared in accordance with United States generally accepted accounting principles (“GAAP”) for interim financial information and are presented in accordance with the requirements of Regulation S-X of the Securities and Exchange Commission (the “SEC”) and with the instructions to Form 10-Q. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three and six months ended February 28, 2019 are not necessarily indicative of the results that may be expected for the fiscal year ending August 31, 2019. The unaudited condensed financial statements should be read in conjunction with the audited financial statements as of and for the year ended August 31, 2018 and footnotes thereto included in the Company’s Annual Report on Form 10-K filed with the SEC on December 21, 2018. The Company has adopted a fiscal year end of August 31st.

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All amounts referred to in the notes to the financial statements are in United States Dollars (\$) unless stated otherwise.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Management utilizes various other estimates, including but not limited to determining the collectability of accounts receivable, the fair value of warrants and options issued, the fair value of conversion features, the recognition of revenue, the valuation allowance for deferred tax assets and other legal claims and contingencies. The results of any changes in accounting estimates are reflected in the financial statements in the period in which the changes become evident. Estimates and assumptions are reviewed periodically and the effects of revisions are reflected in the period that they are determined to be necessary.

Cash and Cash Equivalents

Cash and cash equivalents include investments with initial maturities of three months or less. The Company maintains its cash balances at credit-worthy financial institutions that are insured by the Federal Deposit Insurance Corporation up to \$250,000. Deposits with these banks may exceed the amount of insurance provided on such deposits; however, these deposits typically may be redeemed upon demand and, therefore, bear minimal risk. At February 28, 2019 and August 31, 2018, the uninsured balances amounted to \$0.

Inventory

Inventory consists of finished goods and is stated at the lower of cost by the first-in, first-out method or net realizable value. The Company had 0 and 2,432 containers of "Ultra Peak T" included in inventory at February 28, 2019 and August 31, 2018, respectively.

Revenue Recognition

Adoption of ASU 2014-09, Revenue from Contracts with Customers

On September 1, 2018, the Company adopted Financial Accounting Standards Board (FASB) Accounting Standards Codification Topic 606, Revenue from Contracts with Customers (ASC 606) using the modified retrospective (cumulative effect) transition method. Under this transition method, results for reporting periods beginning September 1, 2018 or later are presented under ASC 606, while prior period results continue to be reported in accordance with previous guidance. The cumulative effect of the initial application of ASC 606 was immaterial, no adjustment was recorded to the opening balance of retained earnings. The timing of revenue recognition for our revenue stream was not materially impacted by the adoption of this standard. The Company believes its business processes, systems, and controls are appropriate to support recognition and disclosure under ASC 606. In addition, the adoption has led to increased footnote disclosures. Overall, the adoption of ASC 606 did not have a material impact on the Company's condensed balance sheet, statement of operations and statement of cash flows for the three and six months ended February 28, 2019. ASC 606 also requires additional disclosures about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to fulfill a contract. As described below, the analysis of contracts under ASC 606 supports the recognition of revenue at a point in time, resulting in revenue recognition timing that is materially consistent with the Company's historical practice of recognizing product revenue when title and risk of loss pass to the customer.

Policy

The Company recognizes revenue upon product delivery. All of our products are shipped through a third party fulfillment center to the customer and the customer takes title to product and assumes risk and ownership of the product when it is delivered. Shipping charges to customers and sales taxes collectible from customers, if any, are included in revenues.

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For revenue from product sales, the Company recognizes revenue in accordance with ASC 606. A five-step analysis must be met as outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. Provisions for discounts and rebates to customers, estimated returns and allowances, and other adjustments are provided for in the same period the related sales are recorded.

Contract Assets

The Company does not have any contract assets such as work-in-process. All trade receivables on the Company's condensed balance sheet are from contracts with customers.

Contract Costs

Costs incurred to obtain a contract are capitalized unless short term in nature. As a practical expedient, costs to obtain a contract that are short term in nature are expensed as incurred. The Company does not have any contract costs capitalized as of February 28, 2019.

Contract Liabilities - Deferred Revenue

The Company's contract liabilities may consist of advance customer payments and deferred revenue. Deferred revenue results from transactions in which the Company has been paid for products by customers, but for which all revenue recognition criteria have not yet been met. Once all revenue recognition criteria have been met, the deferred revenues are recognized.

Income Taxes

The Company utilizes ASC 740, Accounting for Income Taxes, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

The Company accounts for uncertain tax positions in accordance with the provisions of ASC 740. Accounting guidance addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements, under which a company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position.

The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. Accordingly, the Company would report a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. The Company elects to recognize any interest and penalties, if any, related to unrecognized tax benefits in tax expense.

The Tax Cuts and Jobs Act (the "Tax Act") was enacted on December 22, 2017. The Tax Act reduces the U.S. federal corporate tax rate from 35% to 21%. As of the completion of these unaudited condensed financial statements, we have made a reasonable estimate of the effects of the Tax Act. This estimate incorporates assumptions made based upon the Company's current interpretation of the Tax Act, and may change as the Company may receive additional clarification and implementation guidance and as the interpretation of the Tax Act evolves. In accordance with SEC Staff Accounting Bulletin No. 118, the Company will finalize the accounting for the effects of the Tax Act no later than the fourth quarter of fiscal year 2019. Future adjustments made to the provisional effects will be reported as a component of income tax expense in the reporting period in which any such adjustments are determined. Based on the new tax law that lowers corporate tax rates, the Company revalued its deferred tax assets. Future tax benefits are expected to be lower, with the corresponding one time charge being recorded as a component of income tax expense.

Fair Value of Financial Instruments

Under FASB ASC 820-10-05, the FASB establishes a framework for measuring fair value in GAAP and expands disclosures about fair value measurements. This Statement reaffirms that fair value is the relevant measurement attribute. The adoption of this standard did not have a material effect on the Company's financial statements as reflected herein. The carrying amounts of cash and accrued expenses reported on the balance sheet are estimated by management to approximate fair value primarily due to the short-term nature of the instruments.

Fair Value Measurements

The Company follows ASC 820-10 to measure the fair value of its financial instruments and disclosures about fair value of its financial instruments. ASC 820-10 establishes a framework for measuring fair value and expands disclosures about fair value measurements. To increase consistency and comparability in fair value measurements and related disclosures, ASC 820-10 establishes a fair value hierarchy which prioritizes the inputs to valuation techniques used to measure fair value into three (3) broad levels.

The three (3) levels of fair value hierarchy defined by ASC 820-10 are described below:

Level 1 - fair value measurements are those derived from quoted prices (unadjusted in active markets for identical assets or liabilities);

Level 2 - fair value measurements are those derived from inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly (i.e. as prices) or indirectly (i.e. derived from prices); and

Level 3 - fair value measurements are those derived from valuation techniques that include inputs for the asset or liability that are not based on observable market data (unobservable inputs).

Financial instruments classified as Level 1 - quoted prices in active markets include cash.

These financial instruments are measured using management's best estimate of fair value, where the inputs into the determination of fair value require significant management judgment to estimation. Valuations based on unobservable inputs are highly subjective and require significant judgments. Changes in such judgments could have a material impact on fair value estimates. In addition, since estimates are as of a specific point in time, they are susceptible to material near-term changes. Changes in economic conditions may also dramatically affect the estimated fair values.

Fair value estimates discussed herein are based upon certain market assumptions and pertinent information available to management as of February 28, 2019 and August 31, 2018. The respective carrying value of certain financial instruments approximated their fair values due to the short-term nature of these instruments. These financial instruments include cash, accounts payable and accrued expenses.

Derivative Financial Instruments

ASC 815 generally provides three criteria that, if met, require companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments. These three criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument subject to the requirements of ASC 815. ASC 815 also provides an exception to this rule when the host instrument is deemed to be conventional, as described.

The accounting treatment of derivative financial instruments requires that the Company record the embedded conversion option and warrants at their fair values as of the inception date of the agreement and at fair value as of each subsequent balance sheet date. Any change in fair value is recorded as non-operating, non-cash income or expense for each reporting period at each balance sheet date. The Company reassesses the classification of its derivative instruments at each balance sheet date. If the classification changes as a result of events during the period, the contract is reclassified as of the date of the event that caused the reclassification.

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The pricing model we use for determining fair value of our derivatives is the Lattice Model. Valuations derived from this model are subject to ongoing internal and external verification and review. The model uses market-sourced inputs such as interest rates and stock price volatilities. Selection of these inputs involves management's judgment and may impact net income (see note 7).

Conversion options are recorded as debt discount and are amortized as interest expense over the life of the underlying debt instrument using effective interest method.

Basic and Diluted Income (Loss) Per Share

The basic net loss per common share is computed by dividing the net loss by the weighted average number of common stock outstanding. Diluted net income (loss) per common share is computed by dividing the net income (loss) adjusted on an "as if converted" basis, by the weighted average number of common stock outstanding plus potential dilutive securities.

The following is a reconciliation of the number of shares used in the calculation of basic earnings per share and diluted earnings per share for the three months ended February 28, 2019 and 2018:

	<u>2019</u>	<u>2018</u>
Net loss available to common shareholders	\$ (234,846)	\$ (951,494)
Weighted average common shares outstanding	2,724,359	3,039,160
Net loss per share:		
Basic	\$ (0.09)	\$ (0.31)
Diluted	\$ (0.09)	\$ (0.31)

The following is a reconciliation of the number of shares used in the calculation of basic earnings per share and diluted earnings per share for the six months ended February 28, 2019 and 2018:

	<u>2019</u>	<u>2018</u>
Net income (loss) available to common shareholders	\$ 229,227	\$ (1,062,194)
Plus: Income impact of assumed conversions		
Preferred stock dividends	109,934	-
Net income (loss) available to common shareholders + assumed conversions	\$ 339,161	\$ (1,062,194)
Weighted average common shares outstanding	2,883,911	3,027,393
Plus: Incremental shares from assumed conversions		
Series E Convertible Preferred Stock	2,565,577	-
Dilutive potential common shares	2,565,577	-
Adjusted weighted average shares	5,449,488	3,027,393
Net income (loss) per share:		
Basic	\$ 0.08	\$ (0.35)
Diluted	\$ 0.06	\$ (0.35)

The following securities were not included in the computation of diluted net earnings per share as their effect would have been antidilutive:

	<u>February 28, 2019</u>	<u>February 28, 2018</u>
Conversion of notes payable	-	1,318,674
Series E Convertible Preferred stock	-	-
Warrants	712,820	19,231
Stock options	38,462	-
	<u>751,282</u>	<u>1,337,905</u>

Recently Issued Accounting Pronouncements

In February 2016, FASB issued ASU No. 2016-02, “Leases (Topic 842)”, which creates new accounting and reporting guidelines for leasing arrangements. The new guidance requires organizations that lease assets to recognize assets and liabilities on the balance sheet related to the rights and obligations created by those leases, regardless of whether they are classified as finance or operating leases. Consistent with current guidance, the recognition, measurement, and presentation of expenses and cash flows arising from a lease primarily will depend on its classification as a finance or operating lease. The guidance also requires new disclosures to help financial statement users better understand the amount, timing, and uncertainty of cash flows arising from leases. The new standard is effective for annual reporting periods beginning after December 15, 2018, including interim periods within that reporting period, with early application permitted. The Company is currently evaluating the impact of the new pronouncement on its unaudited condensed financial statements.

In July 2017, the FASB issued ASU 2017-11, “Earnings Per Share (Topic 260), Distinguishing Liabilities from Equity (Topic 480) and Derivatives and Hedging (Topic 815): I. Accounting for Certain Financial Instruments with Down Round Features; II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Non-controlling Interests with a Scope Exception”. Part I of this update addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced on the basis of the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. Part II of this update addresses the difficulty of navigating Topic 480, Distinguishing Liabilities from Equity, because of the existence of extensive pending content in the FASB Accounting Standards Codification. This pending content is the result of the indefinite deferral of accounting requirements about mandatorily redeemable financial instruments of certain nonpublic entities and certain mandatorily redeemable non-controlling interests. The amendments in Part II of this update do not have an accounting effect. ASU 2017-11 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. The Company has determined that adopting this pronouncement will not have a material effect on its unaudited condensed financial statements.

On December 22, 2017, the U.S. federal government enacted a tax bill, H.R.1, An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (Tax Cuts and Jobs Act of 2017). Stakeholders raised a narrow-scope financial reporting issue that arose as a consequence of the Tax Cuts and Jobs Act of 2017. ASU 2018-02 is the final version of Proposed Accounting Standards Update 2018-210—Income Statement—Reporting Comprehensive Income (Topic 220), which has been deleted. The amendments in ASU 2018-02 allow a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the Tax Cuts and Jobs Act of 2017. The amendments in ASU 2018-02 affect any entity that is required to apply the provisions of Topic 220, Income Statement-Reporting Comprehensive Income, and has items of other comprehensive income for which the related tax effects are presented in other comprehensive income as required by GAAP. The amendments in this update is effective for all entities for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. Early adoption of the amendments in this Update is permitted, including adoption in any interim period, (1) for public business entities for reporting periods for which financial statements have not yet been issued and (2) for all other entities for reporting periods for which financial statements have not yet been made available for issuance. The amendments in ASU 2018-02 should be applied either in the period of adoption or retrospectively to each period (or periods) in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recognized.

ASU 2018-05 Accounting Standards Update adds SEC paragraphs pursuant to the SEC Staff Accounting Bulletin No. 118, which expresses the view of the staff regarding application of Topic 740, Income Taxes, in the reporting period that includes December 22, 2017 - the date on which the Tax Cuts and Jobs Act (H.R.1, An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018) was signed into law. We are currently evaluating the impact of adopting ASU 2017-13 on our unaudited condensed financial statements.

In June 2018, the FASB issued ASU 2018-07, Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting, which expands the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The guidance is effective for public entities, certain not-for-profit entities, and certain employee benefit plans for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. For all other entities, ASU 2018-07 is effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted, but no earlier than an entity’s adoption date of Topic 606. The Company is evaluating the impact of adopting this pronouncement on our unaudited condensed financial statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820) Changes to the Disclosure Requirements for Fair Value Measurement.

The amendments in this Update modify the disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement.

Removals

The following disclosure requirements were removed from Topic 820:

1. The amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy
2. The policy for timing of transfers between levels
3. The valuation processes for Level 3 fair value measurements
4. For nonpublic entities, the changes in unrealized gains and losses for the period included in earnings for recurring Level 3 fair value measurements held at the end of the reporting period.

Modifications

The following disclosure requirements were modified in Topic 820:

1. In lieu of a rollforward for Level 3 fair value measurements, a nonpublic entity is required to disclose transfers into and out of Level 3 of the fair value hierarchy and purchases and issues of Level 3 assets and liabilities.
2. For investments in certain entities that calculate net asset value, an entity is required to disclose the timing of liquidation of an investee's assets and the date when restrictions from redemption might lapse *only* if the investee has communicated the timing to the entity or announced the timing publicly.
3. The amendments clarify that the measurement uncertainty disclosure is to communicate information about the uncertainty in measurement as of the reporting date.

Additions

The following disclosure requirements were added to Topic 820; however, the disclosures are not required for nonpublic entities:

1. The changes in unrealized gains and losses for the period included in other comprehensive income for recurring Level 3 fair value measurements held at the end of the reporting period
2. The range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements. For certain unobservable inputs, an entity may disclose other quantitative information (such as the median or arithmetic average) in lieu of the weighted average if the entity determines that other quantitative information would be a more reasonable and rational method to reflect the distribution of unobservable inputs used to develop Level 3 fair value measurements.

In addition, the amendments eliminate *at a minimum* from the phrase *an entity shall disclose at a minimum* to promote the appropriate exercise of discretion by entities when considering fair value measurement disclosures and to clarify that materiality is an appropriate consideration of entities and their auditors when evaluating disclosure requirements.

The amendments in this Update are effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of this Update. An entity is permitted to early adopt any removed or modified disclosures upon issuance of this Update and delay adoption of the additional disclosures until their effective date. The impact of this ASU on the Company's unaudited condensed financial statements is not expected to be material.

There are various other updates recently issued, most of which represented technical corrections to the accounting literature or application to specific industries and are not expected to have a material impact on our unaudited condensed financial position, results of operations or cash flows.

Note 2 – Going Concern

As shown in the accompanying unaudited condensed financial statements, the Company has incurred recurring net losses from operations resulting in an accumulated deficit of \$5,720,130 and working capital deficit of \$2,596,605 as of February 28, 2019. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management is actively pursuing new ventures to increase revenues including entering into definitive agreements to acquire the remainder of TruPet LLC and all of the outstanding shares of Bona Vida, Inc. In addition, the Company is currently seeking to raise \$15 million in an ongoing offering to fund operations. The Company, however, is dependent upon its ability to secure this financing and there are no assurances that the Company will be successful, therefore, without sufficient financing it would be unlikely for the Company to continue as a going concern.

The unaudited condensed financial statements do not include any adjustments that might result from the outcome of any uncertainty as to the Company's ability to continue as a going concern. The unaudited condensed financial statements also do not include any adjustments relating to the recoverability and classification of recorded asset amounts or amounts and classifications of liabilities that might be necessary should the Company be unable to continue as a going concern.

Note 3 – Discontinued Operations

On August 21, 2018, the Company cancelled all of the business agreements, related to Yield and entered into a Restructuring Agreement.

Pursuant to the terms of the Restructuring Agreement, the parties agreed to (a) assign to Madison all of the capital stock of Yield to provide for the continuation of the business of Yield as a subsidiary of Madison, (b) terminate the Guaranty Agreement by and between the Company and Prism, and (c) cancel 576,923 of the 961,538 warrants issued to Prism in connection with the note purchase agreement. On the Effective Date, the Company's liability for the senior note issued pursuant to the note purchase agreement was extinguished.

There are no continuing cash inflows our outflows to or from the discontinued operations.

The following information presents the major classes of line items constituting the after-tax loss from discontinued operations in the condensed statements of operations for the year ended August 31, 2018:

Share income	\$	(48,593)
Sales, general and administrative		368,032
Interest expense – accrued interest		117,534
Interest expense – excess value of warrants		2,988,090
Interest expense – amortization of discount on note payable		5,500,000
Mark to market BTC		509,730
Mark to market derivative liability		(4,051,087)
Reserve for uncollectible note receivable		4,490,270
Gain on disposal of discontinued operations		(8,038,065)
Loss from discontinued operations, net of tax	\$	<u>1,835,911</u>

The following table presents the calculation of the gain on the sale of discontinued operations:

Assets of discontinued operations disposed in sale	\$	(9,415)
Liabilities of discontinued operations disposed in sale		9,648,488
Fair value of warrants to purchase 10,000,000 shares of common stock to buyer		(1,601,008)
Gain on disposal of discontinued operations	\$	<u>8,038,065</u>

Note 4 – Investment in TruPet

On December 17, 2018 the Company acquired a minority interest in TruPet. The Company invested \$2,200,000 into TruPet and acquired a Series A Membership Interest equal to approximately 6.7% of the Membership Interests. The Company is entitled to appoint one of the five managers and certain preferential informational rights. The Company entered into a definitive agreement to acquire the remainder of TruPet in February 2019. The definitive agreement is based on various conditions being met including completion of a financing. While the Company believes it is close to completing the financing and closing the acquisition, no assurances can be given that we will close this transaction.

Note 5 – Dividends Payable

On May 30, 2018, the Company issued 803,969.73 shares of its Series B Preferred Stock with a stated value of \$0.99 per share for a total stated value of \$795,930 (the "Series B Preferred Stock"). The Series B Preferred Stock accrued dividends at the rate of 10% per annum on the stated value. During the year ended August 31, 2018, the Company accrued dividends payable in the amount of \$20,280 on the Series B Preferred Stock. From the period September 1, 2018 to October 22, 2018, the Company accrued an additional \$11,339 in dividends payable. At October 22, 2018, the amount of dividends payable on the Series B Preferred Stock was \$31,619. On October 22, 2018, the Company entered into a transaction whereby the Company exchanged all of its convertible debt and all Series B Preferred Stock outstanding for Series E Preferred Stock (the "Exchange Agreement", see note 10). At October 22, 2018, dividends payable in the amount of \$31,619 was outstanding in connection with the Series B Preferred Stock; this amount was converted to Series E Preferred Stock in connection with the Exchange Agreement.

On October 22, 2018, the Company authorized 2,900,000 shares of its Series E Convertible Preferred Stock. The Company accrued dividends on the Series E Preferred Stock in the amounts of \$68,787 and \$109,934 during the three and six months ended February 28, 2019, respectively. The amount of \$97,504 appears as dividends payable on the Company's unaudited condensed balance sheet at February 28, 2019.

Note 6 – Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following:

	February 28, 2019	August 31, 2018
Trade accounts payable	\$ 86,023	\$ 39,052
Payroll and related	18,889	15,931
Accrued interest	-	51,462
Total	<u>\$ 104,912</u>	<u>\$ 106,445</u>

Note 7 – Related Party Transactions

The Company's President, David Lelong, earns a salary in the amount of \$8,000 per month. During the three and six months ended February 28, 2019, the Company paid current period salary in the amount of \$24,000 and \$48,000, respectively to Mr. Lelong. At February 28, 2019, the Company had accrued salary due to Mr. Lelong in the amount of \$108,000 which beginning on February 1, 2019, the Company began to accrue interest at the rate of 18% per annum on the accrued salary payable to Mr. Lelong. During the three months ended February 28, 2019, the Company accrued interest payable to Mr. Lelong in the amount \$1,657. During the three months ended February 28, 2018, the Company paid Mr. Lelong salary in the amount of \$8,000 and accrued an additional \$16,000 in salary due to Mr. Lelong. At August 31, 2018, the Company had accrued salary due to Mr. Lelong in the amount of \$140,000.

During the six months ended February 28, 2018, Mr. Lelong loaned the Company an additional \$35,500 represented by four notes payable, and the Company repaid two of the notes in the amount of \$100,000. The Company accrued interest expense in the amount of \$2,100 and paid accrued interest in the amount of \$1,087 under these notes payable during the six months ended February 28, 2018. At February 28, 2018, the Company has a principal balance in the amount of \$166,500 and accrued interest in the amount of \$3,024 due to Mr. Lelong pursuant to these notes payable. There were no notes outstanding due to Mr. Lelong during the three months ended February 28, 2019.

On January 4, 2019, the Company repurchased 935,897 shares of the Company's common stock from Mr. Lelong in a private transaction. The shares were repurchased by the Company for the par value of the pre-reverse split shares of \$0.001 per share or a total of \$24,333. Prior to the repurchase the shares represented approximately 38% of the Company's outstanding common stock.

Note 8 – Derivative Liability

The Company has entered into convertible note agreements containing beneficial conversion features and warrants. The convertible notes include a ratchet reset provision which allows the note holders to reduce the conversion price should the Company issue equity with an effective price per share that is lower than the stated conversion price in the note agreement (see Note 9). The Company accounts for the fair value of this conversion feature in accordance with ASC 815, Accounting for Derivatives and Hedging and EITF 07-05, which provides that the embedded derivatives should be bundled and valued as a single, compound embedded derivative bifurcate treated as a derivative liability. The Company is required to carry the embedded derivative on its balance sheet at fair value and account for any unrealized change in fair value as a component in its results of operations.

The conversion feature embedded within these convertible notes is a financial derivative and GAAP requires that this embedded conversion option be accounted for at fair value.

During the three months ended February 28, 2019, the Company sold 1,425,641 shares of common stock and 712,820 two-year warrants to purchase one share of common stock at a price of \$3.90 per share for total proceeds of \$2,657,099, net of issuance costs. The warrant holders have an option to settle in cash in the event of a change of control of the Company. The Company considers these warrants a derivative liability, and calculated the fair value of this liability utilizing a lattice model that values the warrant based upon a probability weighted discounted cash flow model.

The following schedule shows the change in fair value of the derivative liabilities for the six months ended February 28, 2019:

Liabilities Measured at Fair Value	Derivative Liability
Balance as of August 31, 2017	\$ 312,878
Issuances	1,565,487
Conversions / redemptions	(1,207,308)
Reclass from sale of discontinued operations	1,601,007
Revaluation loss	<u>45,348</u>
Balance as of August 31, 2018	\$ 2,317,412
Issuances	6,331,058
Revaluation gain	(4,212,621)
Conversion / redemptions	<u>(2,003,390)</u>
Balance as of February 28, 2019	\$ 2,432,459

The derivative liabilities incurred valued based upon the following assumptions and key inputs at February 28, 2019, November 30, 2018 and August 31, 2018:

Assumption	November 30, 2018	August 31, 2018
Expected dividends:	0%	0%
Expected volatility:	155.0%	121.1–248.8%
Expected term (years):	5.00	0.21–1.00
Risk free interest rate:	2.99%	0.97–2.08%
Stock price	\$ 5.46	\$ 9.10–28.86

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The Company derivative warrants were fair valued as of issuance and as of February 28, 2019 with the following assumptions:

- The quoted stock price ranged from of \$2.75 to \$10.14 and would fluctuate with the Company historic volatility;
- The projected volatility curve from an annualized analysis for each valuation period was based on the historical volatility of the Company and the term remaining for each Warrant – the volatility ranged from 198-213%.
- The full reset events projected to occur based on future financing events on March 31, 2019 and December 31, 2019 resulting in a potential reset exercise price.
- Adjustments to warrants exercise prices have not occurred to date due to reset events.
- A fundamental transaction was projected to potentially occur on 4/30/19 or 12/31/19. The likelihood of such an event was estimated at 85% for the 4/30/19 event as of December/January 2019 increasing to 95% by 2/28/19. The 12/31/19 event was estimated at 50% for all dates.
- The option to force early exercise was estimated at 0% since it was unlikely that the Company would meet the registration and trading volume requirements necessary to trigger the option.

Note 9 – Convertible Notes Payable

	<u>February 28, 2019</u>	<u>August 31, 2018</u>
<i>February 2018 Convertible Note</i>		
On February 15, 2018, the Company issued a 3.5% OID senior secured convertible promissory note with a face amount of \$250,000 (the “February 2018 Convertible Note”). The February 2018 Convertible Note bears interest at a rate of 10% per annum and matures in nine months. The Company received cash proceeds of \$241,250 net of the 3.5% original issue discount of \$8,750. At the investor’s option, the principal and accrued interest under the note are convertible into common stock at a rate of \$13.00 per share and have a full reset feature. The February 2018 Convertible Note is secured by all assets of the Company. The Company at any time may prepay in whole or in part the outstanding principal and accrued interest at 120% during the first 90 days and 130% for the period from the 91st day through maturity. In addition, the Company granted the investor 19,231 warrants to purchase 19,231 shares of the Company’s common stock with an exercise price of \$0.26. The warrants have a five-year term. A derivative liability in the amount of \$667,470 was created with regard to the conversion features and warrants associated with this note; \$241,250 was charged to discount on notes payable, and the balance of \$426,220 was charged to interest expense during the three months ended February 28, 2018. On March 26, 2018, the February 2018 Convertible Note was amended to eliminate the reset feature.		
During the year ended August 31, 2018, the Company accrued interest in the amount of \$13,681 on this note; as of August 31, 2018, principal in the amount of \$250,000 was outstanding under the February 2018 Convertible Note. In October 2018, the February 2018 Convertible Note, accrued interest and warrants were converted to a new series of the Company’s preferred stock. During the three months ended February 28, 2019 and 2018, the Company charged to interest expense the amounts of \$0 and \$248,721, respectively, in connection with the amortization of the discount on these notes. During the six months ended February 28, 2019 and 2018, the Company charged to interest expense the amounts of \$16,298 and \$248,721, respectively, in connection with the amortization of the discount on these notes.	\$	- \$ 250,000

March 2018 Convertible Note

On March 9, 2018, the Company issued a 3.5% OID senior secured convertible promissory note with a face amount of \$777,202 (the “March 2018 Convertible Note”). The March 2018 Convertible Note bears interest at a rate of 10% per annum and matures in nine months. The Company received cash proceeds of \$750,000 net of the 3.5% original issue discount of \$27,202. At the investor’s option, the principal and accrued interest under the note are convertible into common stock at a rate of \$13.00 per share. The March 2018 Convertible Note is secured by all assets of the Company. The Company at any time may prepay in whole or in part the outstanding principal and accrued interest at 120% during the first 90 days and 130% for the period from the 91st day through maturity. In addition, the Company granted the investor 59,785 warrants to purchase 59,785 shares of the Company’s common stock with an exercise price of \$0.26. The warrants have a five-year term. A derivative liability in the amount of \$771,460 was created with regard to the conversion features and warrants associated with this note, which was charged to discount on notes payable. On May 9, 2018, the investor transferred its ownership in \$497,458 of principal and \$18,042 of accrued interest in the March 2018 Convertible Note to a third party. The Company revalued the derivative liability associated with the conversion feature of the March 2018 Convertible Note at the time of this restructure, and recorded a gain on revaluation in the amount of \$40,072. During the year ended August 31, 2018, the Company accrued interest in the amount of \$37,780 on the March 2018 Convertible Note. As of August 31, 2018, principal in the amount of \$777,202 was outstanding under the March 2018 Convertible Note. During the three months ended November 30, 2018, the Company accrued interest in the amount of \$11,226 on this note. In October 2018, the March 2018 Convertible Note, accrued interest and warrants were converted to a new series of the Company’s preferred stock.

During the three months ended February 28, 2019 and 2018, the Company charged to interest expense the amount of \$0 in connection with the amortization of the discount on these notes; during the six months ended February 28, 2019 and 2018, the Company charged to interest expense the amount of \$0 in connection with the amortization of the discount on these notes.

	\$	-	\$	777,202
Total	\$	-	\$	1,027,202
Less: Unamortized discount		-		(752,988)
Total, net of discount	\$	-	\$	274,214
Current portion	\$	-	\$	1,027,202
Long term		-		-
Total	\$	-	\$	1,027,202

March 2018 Note to Prism

Under the terms of a series of agreements (the “Former Agreements”) relating to the BTC transactions described in Note 1, Yield issued Prism Funding Co, LP (“Prism”) a 10% OID Senior Secured Convertible Note (the “Senior Note”) in the principal amount of \$5,500,000. The Senior Note was payable 30 days following written demand from Prism (the “Maturity Date”) and with interest at 10% per annum. Pursuant to the terms of the restructuring agreement entered into in August 2018, the Company’s liability for the Senior Note was extinguished upon the restructuring of the BTC loan (see Note 3).

Note 10 – Stockholders' Equity

Preferred Stock

The Company is authorized to issue 20,000,000 shares of \$0.001 par value preferred stock as of February 28, 2019 and August 31, 2018.

Series A Preferred Stock

On February 20, 2019, the Company filed a Certificate of Amendment to Certificate of Designation (the "Amendment to COD") for the Company's Series A Preferred Stock (the "Series A") permitting the Board to convert all outstanding shares of Series A into shares of the Company's common stock at the Board's discretion. On February 22, 2019, the Company issued 115 shares of common stock in exchange for all outstanding 1,000 shares of Series A, and cancelled the Series A. The Company has issued and outstanding 0 and 1,000 shares of Series A as of February 28, 2019 and August 31, 2018, respectively.

Series B Convertible Preferred Stock

On May 30, 2018, the Company authorized 805,000 shares of Series B Convertible Preferred Stock. The Series B Convertible Preferred Stock is convertible at a rate of \$0.78 per share, has a stated value of \$0.99 per share, and accrues dividends at the rate of 10% per annum on the stated value. The Series B Convertible Preferred Stock has voting rights equal to those of the underlying common stock. Under certain default condition, the Series B Convertible Preferred Stock is subject to mandatory redemption at 125%, and the conversion price resets to 75% of the market price of the Company's common stock. On May 31, 2018, the Company issued 803,969.73 shares of Series B Convertible Preferred Stock for the conversion of debt. The Company began to accrue dividends on the Series B Convertible Preferred Stock on June 1, 2018. From June 1, 2018 through August 31, 2018, the Company accrued dividends in the amount of \$20,280 on the Series B Convertible Preferred Stock; from September 1, 2018 through October 22, 2018, the Company accrued dividends in the amount of \$11,339 on the Series B Convertible Preferred Stock. On October 22, 2018, all 803,969.73 outstanding shares of the Series B Convertible Preferred Stock and accrued dividends in the amount of \$31,619 were exchanged for shares of the Company's Series E Convertible Preferred Stock. On February 12, 2019, the Company filed a Certificate of Withdrawal of Certificate of Designation for the Company's Series B Preferred Stock (the "Series B"). There were 0 and 803,969.73 shares of the Series B outstanding at February 28, 2019 and August 31, 2018, respectively.

Series E Convertible Preferred Stock

On October 22, 2018, the Company authorized 2,900,000 shares of its Series E Convertible Preferred Stock. The Series E Convertible Preferred Stock is convertible at a rate of \$0.78 per share, has a stated value of \$0.99 per share, and accrues dividends at the rate of 10% per annum on the stated value. The Series E Convertible Preferred Stock has voting rights equal to those of the underlying common stock. Under certain default condition, the Series E Convertible Preferred Stock is subject to mandatory redemption at 125%, and the conversion price resets to 75% of the market price of the Company's common stock.

On October 22, 2018, the Company entered into an Exchange Agreement whereby the following were exchanged for 2,846,355.54 shares of Series E Convertible Preferred Stock: (i) Convertible debt and accrued interest in the amounts of \$1,027,202 and \$66,299, respectively; (ii) 803,969.73 shares of Series B Convertible Preferred Stock; (iii) accrued dividends in the amount \$31,619 on the Series B Convertible Preferred Stock; and (iv) outstanding warrants to purchase 463,631 shares of the Company's common stock. A derivative liability in the amount of \$2,003,390 related to the convertible debt and was also settled pursuant to the Exchange Agreement. The Company valued the 2,846,355.14 shares of Series E Convertible Preferred Stock at \$2,022,766, and recorded a gain in the amount of \$472,267 on the Exchange Agreement during the three months ended November 30, 2018.

During the three months ended February 28, 2019, holders of the Series E Convertible Preferred Stock converted the following:

- On January 18, 2019, 49,155.36 shares of Series E Preferred stock were converted to 62,389 shares of common stock;
- On February 6, 2019, 49,523 shares of Series E Preferred stock were converted to 62,856 shares of common stock; and
- On February 11, 2019, 54,000 shares of Series E Preferred stock were converted to 68,538 shares of common stock.

The Company has issued and outstanding 2,693,678 and 0 of the Series E Preferred Stock at February 28, 2019 and August 31, 2018, respectively

Common Stock

The Company is authorized to issue 580,000,000 shares of \$0.001 par value common stock as of February 28, 2019 and August 31, 2018. On March 14, 2019, the Company filed a certificate of amendment of Certificate of Incorporation with the Delaware Secretary of State to effect a one-for-26 reverse split of common stock effective March 15, 2019. All of the common stock amounts and per share amounts in these financial statements and footnotes have been retroactively adjusted to reflect the effect of this reverse split. The Company had 72,202,907 shares of common stock outstanding immediately before the reverse stock split, and 2,699,502 shares of common stock outstanding immediately after the reverse stock split. The Company had 2,699,502 and 3,064,763 shares of common stock issued and outstanding as of February 28, 2019 and August 31, 2018, respectively.

Six Months Ended February 28, 2019

On November 28, 2018, the Company repurchased 1,048,904 shares of the Company's common stock from two shareholders in a series of private transactions. The shares were repurchased by the Company for the par value of the pre-reverse split Shares or a total of \$27,271.

On December 12, 2018, the Company closed a private placement offering (the "December Offering") of 1,425,641 units (the "Units"), each unit consisting of (i) one share of the Company's common stock, par value \$0.001 per share and (ii) a warrant to purchase one half of a share of Common Stock. The Units were offered at a fixed price of \$1.95 per Unit for gross proceeds of \$2,779,840. Costs associated with the December Offering were \$122,741, and net proceeds were \$2,657,099. The Warrants are exercisable over a two-year period at the initial exercise price of \$3.90 per share. The Company entered into a Securities Purchase Agreement, dated as of the Closing Date (the "SPA") with each investor in the December Offering.

In connection with the December Offering, the Company also entered into a Registration Rights Agreement, dated as of the Closing Date (the "Registration Rights Agreement") with each investor in the Offering. Pursuant to the Registration Rights Agreement, the Company agreed to use commercially reasonable efforts to file with the Securities and Exchange Commission a registration statement on Form S-1 (or other applicable form) within 60 days following the Closing Date to register the resale of the shares of Common Stock sold in the Offering and shares of Common Stock issuable upon exercise of the Warrants.

On January 4, 2019, the Company repurchased 935,897 shares of the Company's common stock from David Lelong, the Company's former Chief Executive Officer, in a private transaction. The Shares were repurchased by the Company for the par value of the pre-reverse split shares of \$0.001 per share or a total of \$24,333. Prior to the repurchase the shares represented approximately 38% of the Company's outstanding common stock.

On January 18, 2019, the Company issued 62,389 shares of common stock for the conversion of 49,155.36 shares of the Company's Series E Preferred stock; on February 6, 2019, the Company issued 62,856 shares of common stock for the conversion of 49,523 shares of the Company's Series E Preferred stock; and on February 11, 2019, the Company issued 68,538 shares of common stock for the conversion of 54,000 shares of the Company's Series E Preferred stock

On February 22, 2019, the Company issued 115 shares of common stock in exchange for 1,000 shares of Series A.

Six Months Ended February 28, 2018

On September 28, 2017, the Company issued 8,013 shares of common stock, for the conversion of \$16,347 of principal and \$8,653 of accrued interest of convertible notes payable.

On November 16, 2017, the Company issued 9,615 shares of common stock, for the conversion of \$17,518 of principal and \$12,482 of accrued interest of convertible notes payable.

On January 28, 2018, the Company issued 38,405 shares of common stock, for the conversion of \$28,148 of principal and \$1,808 of accrued interest of convertible notes payable.

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Warrants

On October 22, 2018, the Company exchanged 463,631 warrants along with certain additional securities for shares of Series E Convertible Preferred Stock.

On December 12, 2018, the Company closed the December Offering which included the issuance of 712,820 warrants (the “December 2018 Warrants”) with an exercise price of \$3.90 per share. The holders of the December Warrants have an option to settle in cash in the event of a change of control of the Company. The Company considers the December 2018 warrants to be derivative liabilities, and calculated the fair value of the December 2018 warrants by utilizing a lattice model that values the warrant based upon a probability weighted discounted cash flow model.

The following table summarizes the significant terms of warrants outstanding at February 28, 2019:

Range of exercise prices	Number of warrants outstanding	Weighted average remaining contractual life (years)	Weighted average exercise price of outstanding warrants	number of warrants exercisable	Weighted average exercise price of exercisable warrants
\$ 3.90	712,820	1.80	\$ 3.90	712,820	\$ 3.90

Aggregate intrinsic value of warrants outstanding and exercisable at February 28, 2019 was \$0. Aggregate intrinsic value represents the difference between the Company’s closing stock price on the last trading day of the fiscal period, which was \$2.76 as of February 28, 2019, and the exercise price multiplied by the number of warrants outstanding.

Transactions involving warrants are summarized as follows:

	Number of Warrants	Weighted Average Exercise Price
Warrants outstanding at August 31, 2018	463,631	\$ 0.26
Granted	712,820	3.90
Exercised	-	-
Cancelled / Expired	(463,631)	0.26
Warrants outstanding at February 28, 2019	712,820	\$ 3.90

Stock Options

On December 21, 2018, the Company issued 19,231 options to each of Michael Young, the Company’s chairman, and to David Lelong, the Company’s President, Chief Financial Officer, and Secretary (an aggregate of 38,462 options). These options have a five-year term, an exercise price of \$6.76, and vest quarterly over a one-year period beginning January 1, 2019. The fair value of each grant of 19,231 options was \$154,983. During the three months ended February 28, 2019, the Company recorded the amount of \$51,660 representing the pro-rata value of options vested during the period.

The following table summarizes the significant terms of options outstanding at February 28, 2019:

Range of exercise prices	Number of options outstanding	Weighted average remaining contractual life (years)	Weighted average exercise price of outstanding options	number of options exercisable	Weighted average exercise price of exercisable options
\$ 6.76	38,462	4.81	\$ 6.76	0	N/A

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Aggregate intrinsic value of options outstanding and exercisable at February 28, 2019 was \$0. Aggregate intrinsic value represents the difference between the Company's closing stock price on the last trading day of the fiscal period, which was \$2.76 as of February 28, 2019, and the exercise price multiplied by the number of options outstanding.

Transactions involving options are summarized as follows:

	Number of Options	Weighted Average Exercise Price
Options outstanding at August 31, 2018	-	\$ -
Granted	38,462	6.76
Exercised	-	-
Cancelled / Expired	-	-
Options outstanding at February 28, 2019	<u>38,462</u>	<u>\$ 6.76</u>

Note 11 – Fair Value of Financial Instruments

Under FASB ASC 820-10-05, the FASB establishes a framework for measuring fair value in GAAP and expands disclosures about fair value measurements. This Statement reaffirms that fair value is the relevant measurement attribute. The adoption of this standard did not have a material effect on the Company's financial statements as reflected herein. The carrying amounts of cash, accounts payable and accrued expenses reported on the balance sheet are estimated by management to approximate fair value primarily due to the short-term nature of the instruments. The Company had no other items that required fair value measurement on a recurring basis.

The Company's financial assets and liabilities are measured using inputs from the three levels of the fair value hierarchy. The three levels are as follows:

Level 1 - Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 - Inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (e.g., interest rates, yield curves, etc.), and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

Level 3 - Unobservable inputs that reflect our assumptions about the assumptions that market participants would use in pricing the asset or liability.

The following summarized the Company's financial liabilities that are recorded at fair value on a recurring basis at February 28, 2019 and August 31, 2018.

	August 31, 2018			
	Level 1	Level 2	Level 3	Total
Liabilities				
Derivative liabilities	\$ -	\$ -	\$ 2,317,412	\$ 2,317,412
	February 28, 2019			
	Level 1	Level 2	Level 3	Total
Liabilities				
Derivative liabilities	\$ -	\$ -	\$ 2,432,459	\$ 2,432,459

Note 12 – Subsequent Events

On March 4, 2019, Mr. David Lelong resigned from his position as the Company's Chief Executive Officer effective immediately. Mr. Lelong remains as the President, Chief Financial Officer, Secretary and Treasurer of the Company.

On March 4, 2019, the Board of Directors of the Company appointed Mr. Damian Dalla-Longa and Ms. Lori Taylor as the Company's Co-Chief Executive Officers.

On March 7, 2019, the Company filed a Certificate of Withdrawal of Certificate of Designation for the Company's Series A Preferred Stock. The filing of the Amendment in Nevada was approved by the Company's Board of Directors and there were no shares of Series A outstanding on the Effective Date.

On March 8, 2019, the Company issued a Canadian investment banker 141,026 shares of the Company's common stock for advisory services rendered.

Effective March 11, 2019, Sport Endurance, Inc. merged into its wholly-owned subsidiary, Better Choice Company Inc., a Delaware corporation. As a result, the name of Sport Endurance, Inc. was changed to Better Choice Company Inc. Pursuant to the merger, each outstanding share of common stock of Sport Endurance, Inc. converted into one share of common stock of Better Choice Company Inc. and each outstanding share of Series E Convertible Preferred Stock of Sport Endurance, Inc. converted into one share of Series E of Better Choice Company Inc.

On March 14, 2019, Mr. David Lelong notified the Company of his resignation as a member of the Company's Board of Directors effective immediately. Mr. Lelong remains as the President, Chief Financial Officer, Secretary and Treasurer of the Company.

On March 15, 2019, the Board appointed the Company's Co-Chief Executive Officers, Mr. Damian Dalla-Longa and Ms. Lori Taylor, to the Board, as well as Mr. Jeff Davis and Michael Galego. Mr. Galego will be the Chairman of the Board.

On March 15, 2019, the Company effected a 1 for 26 reverse split of its common stock. An additional 682 shares of common stock were issued as a result of rounding up of any fractional shares as a result of the reverse split.

We evaluated subsequent events after the balance sheet date through the date the unaudited condensed financial statements were issued. We did not identify any additional material events or transactions occurring during this subsequent event reporting period that required further recognition or disclosure in these unaudited condensed financial statements.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

OVERVIEW

We were incorporated in the State of Nevada in 2001 under the name Cayenne Construction, Inc., and in 2009 changed our name to Sport Endurance, Inc. Effective March 11, 2019, we changed our name to Better Choice Company Inc. after reincorporating in Delaware.

The Company previously marketed for sale three sport nutritional products which it suspended in March 2018. On March 14, 2018, the Company, through its wholly-owned subsidiary Yield Endurance, Inc. (“Yield”), entered into a series of agreements under which Yield borrowed \$5 million of bitcoin (“BTC”). The Company simultaneously entered into transactions with Madison Partners LLC and Prism Funding Co. LP to lend the BTC to third parties. On August 21, 2018, the Company entered into a series of restructuring agreements to unwind the BTC transactions thereby exiting the BTC and cryptocurrency markets.

Effective March 11, 2019, Sport Endurance, Inc. merged into its wholly-owned subsidiary, Better Choice Company Inc., a Delaware corporation. As a result, the name of Sport Endurance, Inc. was changed to Better Choice Company Inc. Pursuant to the merger, each outstanding share of common stock of Sport Endurance, Inc. converted into one share of common stock of Better Choice Company Inc. and each outstanding share of Series E Convertible Preferred Stock (the “Series E”) of Sport Endurance, Inc. converted into one share of Series E Convertible Preferred Stock of Better Choice Company Inc.

On December 17, 2018, the Company made a \$2,200,000 investment in TruPet LLC, an online seller of pet foods, flea and tick products, pet nutritional products and related pet supplies. On February 2, 2019 and February 29, 2019, respectively, the Company entered into definitive agreements to acquire the remainder of TruPet LLC and all of the outstanding shares of Bona Vida, Inc., an emerging hemp based CBD platform focused on developing a portfolio of brand and product verticals within the animal health and wellness space. The definitive agreements are based on various conditions being met including completion of a financing. While the Company believes it is close to completing the financing and closing the acquisitions, no assurances can be given that we will close these transactions.

On March 14, 2019, the Company filed a Certificate of Amendment of Certificate of Incorporation (the “Amendment”) with the Delaware Secretary of State to effect a one-for-26 reverse split of the Company’s common stock. The Amendment took effect on March 15, 2019. No fractional shares will be issued or distributed as a result of the Amendment. These financial statements give retroactive effect to the reverse stock split for all periods presented, unless otherwise specified.

For the six months ended February 28, 2019, we had a net income of \$339,161 compared to a net loss of \$1,062,194 for the six months ended February 28, 2018. Our accumulated deficit as of February 28, 2019 was \$5,720,130. These conditions raise substantial doubt about our ability to continue as a going concern over the next 12 months.

Results of Operations for the Three Months Ended February 28, 2019 and 2018

Revenues

The Company had sales of \$0 during the three months ended February 28, 2019 compared to \$261 for the three months ended February 28, 2018. The Company had cost of goods sold in the amount of \$0 for gross profit of \$0 during the three months ended February 28, 2019 compared to cost of goods sold in the amount of \$184 for gross profit of \$77 during the three months ended February 28, 2018.

Selling, general and administrative expenses

General and administrative expenses were \$388,905 for the three months ended February 28, 2019 compared to \$66,479 for the three months ended February 28, 2018, an increase of \$322,426. The increase was primarily due to an increase in legal and accounting fees, and the value of stock options vested during the period.

Interest expense

Net interest expense for the three months ended February 28, 2019 was \$368 compared to \$768,129 for the three months ended February 28, 2018, a decrease of \$767,761. The decrease was due primarily to the decrease in debt on the Company's balance sheet.

Excess value of warrants liability over net proceeds from the sale of common stock at inception

The excess value of warrants for the three months ended February 28, 2019 was \$3,675,385 compared to \$0 for the three months ended February 28, 2018. The increase was due to the value of warrants issued with a private placement of common stock in excess of the amount of cash received.

Gain on exchange of debt and equity

During the three months ended February 28, 2018, the Company recorded a non-cash gain in the amount of \$139,323 on exchange of certain convertible notes for a new convertible note. There were no such comparable transactions during the three months ended February 28, 2019.

Change in fair value of derivative liability

The Company had a non-cash gain of \$3,898,599 on revaluation of derivative liabilities during the three months ended February 28, 2019, compared to a non-cash loss of \$256,286 for the three months ended February 28, 2018. The increased gain was due to a decrease in the Company's stock price and to the additional derivative liabilities outstanding at February 28, 2019 related to the Company's warrants.

Net loss

For the reasons above, our net loss for the three months ended February 28, 2019 was \$166,059, a decrease of \$785,435 compared to a loss of \$951,494 for the three months ended February 28, 2018.

Results of Operations for the Six Months Ended February 28, 2019 and 2018

Revenues

The Company had sales of \$0 during the six months ended February 28, 2019 compared to \$475 for the six months ended February 28, 2018. The Company had cost of goods sold in the amount of \$0 for gross profit of \$0 during the six months ended February 28, 2019 compared to cost of goods sold in the amount of \$211 for gross profit of \$264 during the six months ended February 28, 2018.

Selling, general and administrative expenses

General and administrative expenses were \$536,428 for the six months ended February 28, 2019 compared to \$151,722 for the six months ended February 28, 2018, an increase of \$384,706. The increase was primarily due to an increase in legal and accounting fees, and the value of stock options vested during the period.

Interest expense

Net interest expense for the six months ended February 28, 2019 was \$133,913 compared to \$449,136 for the six months ended February 28, 2018, a decrease of \$315,223. The decrease was due primarily to the decrease in debt on the Company's balance sheet.

Excess value of warrants liability over net proceeds from the sale of common stock at inception

The excess value of warrants for the six months ended February 28, 2019 was \$3,675,385 compared to \$0 for the six months ended February 28, 2018. The increase was due to the value of warrants issued with a private placement of common stock in excess of the amount of cash received.

Gain on exchange of debt and equity

During the six months ended February 28, 2019, the Company recorded a non-cash gain in the amount of \$472,267 on exchange of debt and equity to preferred stock, an increase of \$332,944 compared to a gain on exchange of certain convertible notes for a new convertible note during the six months ended February 28, 2018 in the amount of \$139,323.

Change in fair value of derivative liability

The Company had a non-cash gain of \$4,212,620 on revaluation of derivative liabilities during the six months ended February 28, 2019, compared to a loss of \$600,923 during the six months ended February 28, 2018, an increase in gain in the amount of \$4,813,543. The increased gain was due to a decrease in the Company's stock price and to the additional derivative liabilities outstanding at February 28, 2019 related to the Company's warrants.

Net income (loss)

For the reasons above, the Company had net income for the six months ended February 28, 2019 of \$339,161, an increase of \$1,401,355 compared to a loss of \$1,062,194 for the six months ended February 28, 2018.

Liquidity and Capital Resources

The following table summarizes total current assets, liabilities and working capital at February 28, 2019 compared to August 31, 2018.

	<u>February 28, 2019</u>	<u>August 31, 2018</u>
Current Assets	\$ 149,018	\$ 209,076
Current Liabilities	\$ 2,745,623	\$ 2,858,351
Working Capital Deficit	\$ (2,596,605)	\$ (2,649,275)

The Company had cash used in operating activities of \$497,233 during the six months ended February 28, 2019. This primarily consisted of the Company's net income of \$339,161, decreased by non-cash gain on exchange of debt and equity of \$472,267 and by a change in the market value of derivative liabilities in the amount of \$4,212,621, offset by excess value of warrants liability over net proceeds from the sale of common stock at inception of \$3,675,385, value of options vested of \$51,660, and amortization of discount on convertible debt in the amount of \$118,707. The Company's cash position also increased by \$2,742 as a result of changes in components of current assets and current liabilities.

During the six months ended February 28, 2019, the Company used \$2,200,000 of cash in investing activities in connection with its investment in TruPet.

During the six months ended February 28, 2019, the Company had cash provided by financing activities in the amount of \$2,605,495, consisting of the cash received from the sale of common stock of \$2,657,099 (net of costs in the amount of \$122,741), partially offset by the purchase of \$51,604 of common stock from shareholders.

The Company had \$48,842 of cash as of April 9, 2019 which is not sufficient to meet our working capital needs for at least the next 12 months. In addition, it is not likely we can complete an acquisition including those described above, without completing a financing. The amount and type of financing and its dilution to existing shareholders cannot be determined at this time. If the Company is able to raise \$15 million it is seeking in an ongoing offering and complete the TruPet and Bona Vida acquisitions, current investors will own 14% of the Company on a fully diluted basis. No assurances can be given that the Company will complete the financing or the two acquisitions.

We anticipate that we will incur operating losses in the next 12 months. Our prospects must be considered in light of the risks, expenses and difficulties frequently encountered by companies in their early stage of development. Such risks for us include, but are not limited to, the risks described in our Form 10-K filed on December 21, 2018.

Cautionary Note Regarding Forward Looking Statements

This Report contains forward-looking statements including statements regarding our ability to acquire TruPet and Bona Vida, complete a material financing, and our liquidity. All statements other than statements of historical facts contained in this report, including statements regarding our future financial position, liquidity, business strategy, the acquisition of TruPet, and plans and objectives of management for future operations, are forward-looking statements. The words "believe," "may," "estimate," "continue," "anticipate," "intend," "should," "plan," "could," "target," "potential," "is likely," "will," "expect" and similar expressions, as they relate to us, are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs.

The results anticipated by any or all of these forward-looking statements might not occur. Important factors that could cause actual results to differ from those in the forward-looking statements include those relating to the condition of the capital markets and the ability of the parties to meet or waive key conditions to the closing of the two acquisitions. Other risks are contained in our Form 10-K for the fiscal year ended August 31, 2018. Any forward-looking statement made by us in this report speaks only as of the date on which it is made. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update or revise any forward-looking statements, whether as the result of new information, future events or otherwise.

Going Concern

Our unaudited condensed financial statements are prepared using GAAP applicable to a going concern, which contemplate the realization of assets and liquidation of liabilities in the normal course of business. We have incurred continuous losses from operations, have an accumulated deficit of \$5,720,130 and working capital deficit of \$2,596,605 at February 28, 2019. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management is actively pursuing new ventures to increase revenues including entering into definitive agreements to acquire the remainder of TruPet LLC and all of the outstanding shares of Bona Vida, Inc. In addition, the Company is currently seeking to raise \$15 million in an ongoing offering to fund operations. The Company, however, is dependent upon its ability to secure this financing and there are no assurances that the Company will be successful, therefore, without sufficient financing it would be unlikely for the Company to continue as a going concern.

The unaudited condensed financial statements do not include any adjustments that might result from the outcome of any uncertainty as to the Company's ability to continue as a going concern. The unaudited condensed financial statements also do not include any adjustments relating to the recoverability and classification of recorded asset amounts or amounts and classifications of liabilities that might be necessary should the Company be unable to continue as a going concern.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have, or are reasonably likely to have, a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results or operations, liquidity, capital expenditures or capital resources that are material to investors.

Critical Accounting Policies

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amount of assets and liabilities, the disclosure of contingent assets and liabilities and the reported amounts of revenue and expenses during the reported periods. The more critical accounting estimates include estimates related to revenue recognition and accounts receivable allowances. We also have other key accounting policies, which involve the use of estimates, judgments and assumptions that are significant to understanding our results, which are described in Note 1 to our unaudited condensed financial statements appearing elsewhere in this report.

Recently Issued Accounting Standards

There are various updates recently issued, most of which represented technical corrections to the accounting literature or application to specific industries and are not expected to have a material impact on the Company's financial position, results of operations or cash flows. Note 1 to our unaudited condensed financial statements appearing elsewhere in this report includes Recent Accounting Pronouncements.

Item 3. Quantitative and Qualitative Disclosure About Market Risk.

This item is not applicable as we are currently considered a smaller reporting company.

Item 4. Controls and Procedures.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit pursuant to the requirements of the Securities Exchange Act of 1934 (the "Exchange Act") is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's ("SEC")'s rules and forms. Disclosure controls and procedures include, among other things, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file under the Exchange Act is accumulated and communicated to our management, including our principal executive and financial officers, as appropriate, to allow timely decisions regarding required disclosure.

Evaluation of Disclosure Controls and Procedures

Our Chief Financial Officer, David Lelong, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act as of the end of the period covered by this report. Based on the evaluation, Mr. Lelong concluded that our disclosure controls and procedures are not effective in timely alerting them to material information relating to us that is required to be included in our periodic SEC filings and ensuring that information required to be disclosed by us in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our chief financial officer, or person performing similar functions, as appropriate to allow timely decisions regarding required disclosure, for the following reasons:

- The Company does not have an independent board of directors or audit committee or adequate segregation of duties;
- All of our financial reporting is carried out by our financial consultant;
- We do not have an independent body to oversee our internal controls over financial reporting and lack segregation of duties due to the limited nature and resources of the Company.

We plan to rectify these weaknesses by implementing an independent board of directors and hiring additional accounting personnel once we have additional resources to do so.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we may be involved in litigation relating to claims arising out of our operations in the normal course of business. As of the date of this Report to our knowledge, there were no pending or threatened lawsuits that could reasonably be expected to have a material effect on the results of our operations and there are no proceedings in which any of our directors, officers or affiliates, or any registered or beneficial shareholder, is an adverse party or has a material interest adverse to our interest.

Item 1A. Risk Factors.

This item is not applicable to a smaller reporting company.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

We have previously disclosed all sales of securities without registration under the Securities Act of 1933.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

None.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit	Exhibit Description	Filed herewith	Incorporated by reference		
			Form	Exhibit	Filing date
3.1	Certificate of Incorporation	X			Filed herewith
3.2	Certificate of Amendment of Certificate of Incorporation - name change	X			Filed herewith
3.3	Certificate of Amendment of Certificate of Incorporation - reverse stock split		8-K	3.1	3/20/19
3.4	Certificate of Merger of Sport Endurance, Inc. with and into Better Choice Company Inc.	X			Filed herewith
3.5	Bylaws of Better Choice Company Inc.	X			Filed herewith
3.6	Certificate of Withdrawal of Certificate of Designation for Series B		8-K	3.1	2/19/19
3.7	Certificate of Amendment to Articles of Incorporation		8-K	3.1	2/25/19
3.8	Certificate of Amendment to Certificate of Designation		8-K	3.2	2/25/19
3.9	Certificate of Withdrawal of Certificate of Designation for Series A		8-K	3.1	3/8/19
3.10	Certificate of Designation for Series E Convertible Preferred Stock	X			Filed herewith
4.1	Form of Warrant		8-K	4.1	12/13/18
10.1	Form of Exchange Agreement+		8-K	10.1	10/25/18
10.2	Form of Stock Purchase Agreement		8-K	10.1	12/13/18
10.3	Form of Registration Rights Agreement		8-K	10.2	12/13/18
10.4	David Lelong Employment Agreement		8-K	10.1	2/7/19
10.5	2019 Equity Incentive Plan		8-K	10.1	1/24/19
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act	X			
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act	X			
32.1	Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act	X			
32.2	Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act	X			
101.INS	XBRL Instance Document	X			
101.SCH	XBRL Taxonomy Extension Schema Document	X			
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	X			
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	X			
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	X			
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	X			

+ Certain schedules, appendices and exhibits to this agreement have been omitted in accordance with Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished supplementally to the Securities and Exchange Commission staff upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BETTER CHOICE COMPANY INC.

Date: April 15, 2019

By: /s/ Damian Dalla-Longa
Damian Dalla-Longa
Co-Chief Executive Officer, Director
(Principal Executive Officer)

BETTER CHOICE COMPANY INC.

Date: April 15, 2019

By: /s/ David Lelong
David Lelong
Chief Financial Officer
(Principal Accounting Officer)

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:30 PM 01/04/2019
FILED 04:30 PM 01/04/2019
SR 20190081786 - File Number 7223705

**CERTIFICATE OF INCORPORATION
OF
BETTER CHOICE COMPANIES INC.**

1. The name of the corporation is Better Choice Companies Inc. (the "Company").
2. The address of its registered office in the State of Delaware, County of New Castle, is 3411 Silverside Road, Tatnall Building #104, Wilmington, DE 19810. The name of its registered agent at such address is Corporate Creations Network Inc.
3. The nature of the business or purposes to be conducted or promoted are to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.
4. The Company shall have authority to issue 580,000,000 shares of common stock, par value \$0.001 per share and 20,000,000 shares of preferred stock, par value \$0.001 per share with such rights, preferences and limitations as shall be established from time to time by the board of directors.
5. The name and mailing address of the incorporator is as follows:

Michael D. Harris
3001 PGA Boulevard, Suite 305
Palm Beach Gardens, FL 33410
6. The powers of the incorporator shall terminate upon the election of the Company's directors.
7. The Company is to have perpetual existence. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized to make, amend, alter or repeal the bylaws of the Company.
8. Elections of directors need not be by written ballot unless the bylaws of the Company shall so provide.

Meetings of stockholders may be held within or without the State of Delaware as the bylaws may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the bylaws of the Company.
9. The Company reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Any amendments may be passed by a majority of the outstanding voting power and not by a majority of each class or series of outstanding capital stock.

10. No director of this Company shall be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. Nothing in this paragraph shall serve to eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to this Company or its stockholders, (b) for acts or omissions not in good faith or which involves intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware General Corporation Law, or (d) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Company shall not adversely affect any right or protection of a director of the Company existing at the time of such repeal or modification.

11. (a) Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding (except as provided in Section 11 (f)) whether civil, criminal or administrative, (a "Proceeding"), or is contacted by any governmental or regulatory body in connection with any investigation or inquiry (an "Investigation"), by reason of the fact that he or she is or was a director or executive officer (as such term is utilized pursuant to interpretations under Section 16 of the Securities Exchange Act of 1934) of the Company or is or was serving at the request of the Company 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 employee benefit plans (an "Indemnitee"), whether the basis of such Proceeding or Investigation is alleged action in an official capacity or in any other capacity as set forth above shall be indemnified and held harmless by the Company to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith and such indemnification shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Company the expenses incurred in defending any such Proceeding in advance of its final disposition (an "Advancement of Expenses"); provided, however, that an Advancement of Expenses shall be made only upon delivery to the Company of an undertaking, by or on behalf of such Indemnitee, 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 that such Indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise (an "Undertaking").

(b) If a claim under paragraph (a) of this Section is not paid in full by the Company within 60 days after a written claim has been received by the Company, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Company to recover the

unpaid amount of the claim. If successful in whole or in part in any such suit or in a suit brought by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In

(i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an Advancement of Expenses) it shall be a defense that, and

(ii) any suit by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking the Company shall be entitled to recover such expenses upon a final adjudication that,

the Indemnitee has not met the applicable standard of conduct set forth in the Delaware General Corporation Law. Neither the failure of the Company (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Company (including its board of directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right hereunder, or by the Company to recover an Advancement of Expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified or to such Advancement of Expenses under this Section or otherwise shall be on the Company.

(c) The rights to indemnification and to the Advancement of Expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this certificate of incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

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

(e) The Company may, to the extent authorized from time to time by the board of directors, grant rights to indemnification and to the Advancement of Expenses, to any employee or agent of the Company to the fullest extent of the provisions of this Section with respect to the indemnification and Advancement of Expenses of directors, and executive officers of the Company.

(f) Notwithstanding the indemnification provided for by this Section 11, the Company's bylaws, or any written agreement, such indemnity shall not include any expenses incurred by such Indemnitees relating to or arising from any Proceeding in which the Company asserts a direct claim against an Indemnitee, or an Indemnitee asserts a direct claim against the

Company, whether such claim is termed a complaint, counterclaim, crossclaim, third-party complaint or otherwise.

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the Delaware General Corporation Law, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 4th day of January, 2019.

/s/ Michael D. Harris
Michael D. Harris, Incorporator

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:46 PM 02/05/2019
FILED 03:46 PM 02/05/2019
SR 20190750392 - File Number 7223705

**CERTIFICATE OF DELAWARE
CERTIFICATE OF AMENDMENT
OF CERTIFICATE OF INCORPORATION**

The corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify:

FIRST: That at a meeting of the Board of Directors of
Better Choice Companies Inc .

resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:
RESOLVED, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered one” so that, as amended, said Article shall be and read as follows:

The name of the corporation is Better Choice Company Inc. (the “Company;”)

SECOND: That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF , said corporation has caused this certificate to be signed this 1st day of February , 2019 .

By: /s/ David Lelong
Authorized Officer
Title: Chief Executive Officer
Name: David Lelong
Print or Type

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:32 PM 03/0812019
FILED 02:32 PM 03/0812019
SR 20191850091 - File Number 7223705

CERTIFICATE OF MERGER OF
SPORT ENDURANCE, INC.
(a Nevada corporation)
WITH AND INTO
BETTER CHOICE COMPANY INC.
(a Delaware corporation)

Pursuant to Section 252 of the General Corporation Law of
the State of Delaware

Better Choice Company Inc., a Delaware corporation (the "Subsidiary"), DOES HEREBY CERTIFY AS FOLLOWS:

FIRST: That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>NAME</u>	<u>STATE OF INCORPORATION</u>
Better Choice Company Inc.	Delaware
Sport Endurance, Inc.	Nevada

SECOND: That the Agreement and Plan of Merger (the "Merger Agreement"), by and between Sport Endurance, Inc., a Nevada corporation (the "Parent"), and the Subsidiary setting forth the terms and conditions of the merger of the Parent with and into the Subsidiary (the "Merger") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation in the Merger is Better Choice Company Inc., a Delaware corporation (the "Surviving Corporation").

FOURTH: That pursuant to the Merger Agreement, from and after the effective time of the Merger, the Certificate of Incorporation of the Subsidiary shall be the Certificate of Incorporation of the Surviving Corporation.

FIFTH: The executed copy of the Merger Agreement is on file at the principal place of

business of the Surviving Corporation at the following address: 81 Prospect Street, Brooklyn, New York 11201.

SIXTH: That a copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned party, as the Surviving Corporation, has caused this Certificate of Merger to be executed in its respective corporate name as of the 7th day of March, 2019.

Better Choice Company Inc.,
a Delaware corporation

By: /s/ Michael Young
Michael Young, Chairman of the Board

**BYLAWS
OF
BETTER CHOICE COMPANY INC.**

As Adopted on

January 29, 2019

Article I. Meetings of Shareholders

Section 1. Annual Meeting. The annual meeting of shareholders of Better Choice Company Inc. (the “Company”) shall be held at the time and place designated by the Board of Directors of the Company. Business transacted at the annual meeting shall include the election of directors of the Company and such other matters as shall be stated in the notice of meeting.

Section 2. Special Meetings. Special meetings of the shareholders shall be held when directed by the Chairman of the Board of Directors, or the Chief Executive Officer, or when requested in writing by the holders of not less than 10 percent of all the voting power entitled to vote at the meeting. The date, time and place of any special meeting of shareholders shall be determined by the Chairman of the Board of Directors or the Chief Executive Officer, provided, however, the date shall not be more than 75 days from receipt by the Company of the request for a special meeting of shareholders. Business transacted at any special meeting of shareholders shall be limited to the purpose or purposes stated in the notice of such meeting.

Section 3. Place. Meetings of shareholders may be held within or without the State of Delaware.

Section 4. Notice. Written notice stating the place, day and hour of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the meeting, either personally or by first class mail, by or at the direction of the Chairman of the Board of Directors, Chief Executive Officer, the Secretary, or the officer or persons calling the meeting to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the Company, with postage there on prepaid. The provisions of Section 229 of the Delaware General Corporation Law (the “DGCL”) as to waiver of notice are applicable.

Section 5. Notice of Adjourned Meetings. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. If, however, after the adjournment the Board of Directors fixes a new record date for the adjourned meeting, a notice of adjourned meeting, shall be given as provided in this section to each shareholder of record on the new record date entitled to vote at such meeting. If the adjournment is for more than 30 days, notice of the adjourned meeting shall be given to each

shareholder of record entitled to vote at the meeting.

Section 6. Closing of Transfer Books and Fixing Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 60 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for the determination of shareholders, such date in any case to be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the day preceding the day on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date for the adjourned meeting.

The Company's stock transfer agent shall cause to be prepared, at least 10 days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Company. The list of shareholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law (a) the stock ledger shall be the only evidence as to who are the shareholders entitled by these Bylaws to examine the list of shareholders required by these Bylaws or to vote in person or by proxy at any meeting of shareholders and (b) failure to prepare or make available the list of shareholders shall not affect the validity of actions taken at the meeting.

Section 7. Shareholder Quorum and Voting. A majority of the outstanding voting power then entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. When a specified item of business is required to be voted on by a class or series of stock, a majority of the outstanding voting power of such class or series shall constitute a quorum for the transaction of such item of business by that class or series.

If a quorum is present, the affirmative vote of the majority of the voting power present at the meeting in person or by proxy of voting power and entitled to vote on the subject matter shall be the act of the shareholders unless otherwise provided. The directors of the Company shall be elected by a plurality of such voting power.

After a quorum has been established at a shareholders' meeting, the subsequent withdrawal of shareholders, so as to reduce the number of shareholders entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

Section 8. Voting of Shares. Each outstanding share, regardless of class or series, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as otherwise provided for in the Certificate of Designation for such class or series.

Treasury shares, shares of stock of this Company owned by another corporation, the majority of the voting stock of which is owned or controlled by this Company, and shares of stock of this Company, held by it in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or his duly authorized attorney-in-fact.

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected at that time and for whose election he has a right to vote.

Shares standing in the name of another corporation, domestic or foreign, may be voted by the officer, agent, or proxy designated by the bylaws of the corporate shareholder; or, in the absence of any applicable bylaw, by such person as the Board of Directors of the corporate shareholder may designate. Proof of such designation may be made by presentation of a certified copy of the bylaws or other instrument of the corporate shareholder. In the absence of any such designation, or in case of conflicting designation by the corporate shareholder, the Chairman of the Board of Directors, President, any Vice President, Secretary or Treasurer of the corporate shareholder shall be presumed to possess, in that order, authority to vote such shares.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority to do so is contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee or his nominee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

Prior to any meeting of shareholders, the Chairman of the Board of Directors or the Chief Executive Officer may, and shall if required by law, appoint one or more inspectors to act at such meeting and make a written report thereof and may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at the meeting of shareholders, the person presiding at the meeting may, and shall if required by law, appoint one or more inspectors to act at the meeting. The inspectors need not be shareholders of the Company, and any director or officer of the Company may be an inspector on any matter other than a vote for or against such director's or officer's election to any position with the Company or on any other matter in which such officer or director may be directly interested. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons to assist them in the performance of their duties. The date and time of the opening and closing of the polls for each matter upon which the shareholders will vote at a meeting shall be announced at the meeting. No ballot, proxy or vote, nor any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls. In determining the validity and counting of proxies and ballots cast at any meeting of shareholders of the Company, the inspectors may consider such information as is permitted by applicable law.

Section 9. Proxies. Every shareholder entitled to vote at a meeting of shareholders or to express consent without a meeting of shareholders may authorize another person or persons to act for him by proxy.

Every proxy must be signed by the shareholder or his attorney in-fact. No proxy shall be valid after the expiration of three years from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by law or as provided in such proxy. A shareholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Company. Voting at meetings of shareholders need not be by written ballot unless the holders of a majority of the outstanding voting power present in person or represented by proxy at such meeting shall

so determine.

The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

If a proxy for the same shares confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting, or if only one is present then that one, may exercise all the powers conferred by the proxy; but if the proxy holders present at the meeting are equally divided as to the right and manner of voting in any particular case, the voting of such shares shall be prorated.

If a proxy expressly provides, any proxy holder may appoint in writing a substitute to act in his place.

Section 10. Action by Shareholders without a Meeting. Any action required by law, these bylaws, or the certificate of incorporation of this Company to be taken at any annual or special meeting of shareholders of the Company, or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all outstanding voting power entitled to vote thereon were present and voted. If any class of shares is entitled to vote thereon as a class, such written consent shall be required of the holders of a majority of the voting power of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

Promptly after obtaining such authorization by written consent, notice shall be given to those shareholders who have not consented in writing. The notice shall fairly summarize the material features of the authorized action, and, if the action be a merger or consolidation for which appraisal rights are provided under the DGCL, be given in accordance with Section 262(d)(2) of the Act, as amended.

Section 11. Advance Notice of Shareholder Nominees and Shareholder Business.

To be properly brought before an annual meeting or special meeting, nominations for the election of directors or other business must be:

- (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors,
- (b) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or
- (c) otherwise properly brought before the meeting by a shareholder.

For such other nominations or other business to be considered properly brought before the meeting by a shareholder, such shareholder must have given timely notice and in proper form of his intent to bring such business before such meeting. To be timely, such shareholder's notice must be delivered to or mailed and received by the Secretary of the Company not less than 90 days prior to the meeting; provided, however, that in the event that less than 100 days notice of prior public disclosure of the date of the meeting is given or made to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. To be in proper form, a shareholder's notice to the Secretary shall set forth:

- (i) the name and address of the shareholder who intends to make the nominations, propose the business, and, as the case may be, the name and address of the person or persons to be nominated or the nature of the business to be proposed;
- (ii) a representation that the shareholder is a holder of record of stock of the Company entitled to vote at such meeting and, if applicable, intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice or introduced the business specified in the notice;
- (iii) if applicable, a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder;
- (iv) such other information regarding each nominee or each matter of business to be proposed by such shareholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, or the matter been proposed, or intended to be proposed by the Board of Directors; and
- (v) if applicable, the consent of each nominee to serve as director of the Company if so elected.

The Chairman of the Board of Directors of the meeting may refuse to acknowledge the nomination of any person or the proposal of any business not made in compliance with the foregoing procedure.

Section 12. Conduct of Meetings; Remote Communication. Annual and special meetings shall be conducted in accordance with these Bylaws or as otherwise prescribed by the Board of Directors. The Chairman of the Board of Directors or the Chief Executive Officer of the Company shall preside at such meetings, or in the absence of the Chairman or Chief Executive Officer, any person designated by the Board of Directors.

The order of business at each such meeting shall be as determined by the Chairman of the meeting. The Chairman of the meeting shall have the right and authority to prescribe such rules,

regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the adjournment of any meeting, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Company, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls. The Chairman of the meeting shall have absolute authority over matters of procedure and there shall be no appeal from the ruling of the Chairman.

If disorder shall arise that prevents continuation of the legitimate business of the meeting, the Chairman may announce the adjournment of the meeting and quit the chair and upon the Chairman so doing the meeting is immediately adjourned. The Chairman may ask or require that anyone who is not a bona fide shareholder or proxyholder leave the meeting.

If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may, by means of remote communication: (a) participate in a meeting of shareholders; and (b) be deemed present in person and vote at a meeting of shareholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Company shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder, (ii) the Company shall implement reasonable measures to provide such shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Company.

Article II. Directors

Section 1. Function. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Board of Directors.

Section 2. Qualification. Directors need not be residents of the State of Delaware or shareholders of this Company.

Section 3. Number. This Company shall have no less than one nor greater than nine directors. The number of directors may be established from time-to-time by resolution of the Board of Directors or shareholders, but no decrease shall have the effect of shortening the terms of any incumbent director.

Section 4. Compensation. The Board of Directors shall have authority to fix the compensation of directors.

Section 5. Duties of Directors. A director shall perform his duties as a director, including his duties as a member of any committee of the Board of Directors upon which he may serve, in good

faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

In performing his duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) one or more officers or employees of the Company whom the director reasonably believes to be reliable and competent in the matters presented,
- (b) counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence, or
- (c) a committee of the Board of Directors upon which he does not serve, duly designated in accordance with a provision of the Certificate of Incorporation or the Bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance described above to be unwarranted.

A person who performs his duties in compliance with this section 5 shall have no liability by reason of being or having been a director of the Company.

The Board of Directors shall appoint one director as Chairman of the Board of Directors.

Section 6. Presumption of Assent. A director of the Company who is present at a meeting of its Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

Section 7. Election and Term. Each person named in the Certificate of Incorporation as a member of the initial Board of Directors and all other directors appointed by the Board of Directors to fill vacancies thereof shall hold office until the first annual meeting of shareholders, and until his successor shall have been elected and qualified or until his earlier resignation, removal from office or death.

At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified or until his earlier resignation, removal from office or death.

Section 8. Vacancies. Any vacancy occurring in the Board of Directors, including any vacancy created by reason of an increase in the number of directors, may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A

director elected to fill a vacancy shall hold office only until the next election of directors by the shareholders.

Section 9. Removal of Directors. At a meeting of the shareholders called expressly for that purpose, any director or the entire Board of Directors may be removed, with or without cause, by a vote of the holders of a majority of the voting power, present in person or by proxy, then entitled to vote at an election of directors.

Section 10. Quorum and Voting. A majority of the number of directors fixed by these Bylaws shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 11. Director Conflicts of Interest. No contract or other transaction between this Company and one or more of its directors or any other corporation, firm, association or entity in which one or more of the directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the Board of Directors or a Committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the Board of Directors or Committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the Company at the time it is authorized by the Board of Directors, a Committee or the shareholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

Section 12. Place of Meeting. Regular and special meetings by the Board of Directors may be held within or without the State of Delaware.

Section 13. Time, Notice and Call of Meetings. Regular meetings of the Board of Directors shall be held without notice on the second Tuesday of April of each year. Notice of the time and place of special meetings of the Board of Directors shall be given to each director by either personal delivery, any form of electronic notice including email or facsimile transmission at least one day before the meeting.

Notice of a meeting of the Board of Directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and waiver of any and all obligations to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when

a director states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

Meetings of the Board of Directors may be called by the Chairman of the Board of Directors or by the Chief Executive Officer, or by any director. At a meeting of the Board of Directors the Chairman of the Board of Directors shall have the power to present the agenda for the meeting and propose such matters as the Chairman of the Board of Directors shall deem necessary or appropriate.

Members of the Board of Directors may participate in a meeting of such Board of Directors by means of a conference telephone or other electronic media by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 14. Action Without a Meeting. Any action required to be taken at a meeting of the directors of the Company, or any action which may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing (which shall include email or facsimile transmission), setting forth the action to be taken, signed by all of the directors, is filed in the minutes of the proceedings of the Board of Directors. Such consent shall have the same effect as a unanimous vote.

Section 15. Committees. The Board of Directors may designate from among its members such Committees it deems prudent, such as, but not limited to, an Executive Committee, Audit Committee, Compensation Committee, and a Nominating and Corporate Governance Committee. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board of Directors or a provision in the rules of such Committee to the contrary, a majority of the entire authorized number of members of such Committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such Committee, and in other respects each Committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws. Each Committee shall prepare minutes of its meetings which shall be delivered to the Secretary of the Company for inclusion in the Company's records.

Article III. Officers

Section 1. Officers. The officers of this Company shall consist of a Chief Executive Officer, a Chief Financial Officer, one or more Vice Presidents, Secretary, and Treasurer, and such other

officers as may be designated by the Board of Directors, each of whom shall be approved by the Board of Directors from time-to-time. Any office may have two persons who shall have concurrent powers, except as modified by the Board of Directors. Any reference to officer in these Bylaws shall include the other person who had been appointed to the same office. Any two or more offices may be held by the same person. The failure to elect any of the above officers shall not affect the powers of this Company.

Section 2. Duties. The officers of this Company shall have the following duties and such other duties as delegated by the chief executive officers.

The Chief Executive Officer of the Company shall have general and active management of the business and affairs of the Company subject to the directions of the Board of Directors. When the Board of Directors has not appointed a President and the DGCL refers to the President, the Chief Executive officer shall be deemed to be the President for the purposes of the DGCL.

The Chief Financial Officer shall be the Chief Accounting Officer and be responsible for preparation of all financial statements of the Company. He shall keep correct and complete records of account, showing accurately at all times the financial condition of the corporation. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Company and shall perform such other duties as the Bylaws provide or the Board of Directors may prescribe.

The Treasurer shall be the legal custodian of all monies, notes, securities and other valuables that may from time-to-time come into the possession of the Company. He shall immediately deposit all funds of the Company coming into his hands in some reliable bank or other depository to be designated by the Board of Directors and shall keep this bank account in the name of the Company.

Any Vice President(s) shall perform such duties as may be prescribed by the Board of Directors or the one designated Vice President shall act whenever the Chief Executive Officer shall be unavailable.

The Secretary shall have custody of and maintain all of the corporate records except the financial records, shall record the minutes of all meetings of the shareholders and whenever else required by the Board of Directors or the Chief Executive Officer, and shall perform such other duties as may be prescribed by the Board of Directors.

Section 3. Removal of Officers. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Company will be served thereby.

Any officer or agent elected by the shareholders may be removed only by vote of the shareholders, unless the shareholders shall have authorized the directors to remove such officer or agent.

Any vacancy, however occurring, in any office may be filled by the Board of Directors.

Removal of any officer shall be without prejudice to the contract rights, if any, of the person so removed; however, election or appointment of an officer or agent shall not of itself create contract rights.

Article IV. Stock Certificates

Section 1. Issuance. Every holder of shares in this Company shall be entitled to have a certificate, representing all shares to which he is entitled. No certificate shall be issued for any share until such share is fully paid. Shares of preferred stock shall be issued by the Company only after the authorization of the same and filing a Certificate of Designation (or Amendment to the Certificate of Incorporation) with the Delaware Secretary of State and satisfying all other requirements of the Certificate of Incorporation and the DGCL with respect thereto.

Section 2. Form. Certificates representing shares in this Company shall be signed by the President or Vice President and the Secretary or an Assistant Secretary or Treasurer or Assistant Treasurer and may be sealed with the seal of this Company or a facsimile thereof. The signature of the President or Vice President and the Secretary or Assistant Secretary or Treasurer or Assistant Treasurer may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the Company itself or an employee of the Company. In case any officer who signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Company with the same effect as if he were such officer at the date of its issuance.

Every certificate representing shares issued by this Company shall set forth or fairly summarize upon the face or back of the certificate, or shall state that the Company will furnish to any shareholder upon request and without charge a full statement of, the designations, preferences, limitations and relative rights of the shares of each class or series authorized to be issued, and the variations in the relative rights and preferences between the shares of each series so far as the same have been fixed and determined, and the authority of the Board of Directors to fix and determine the relative rights and preferences of subsequent series.

Every certificate representing shares which are restricted as to the sale, disposition, or other transfer of such shares shall state that such shares are restricted as to transfer and shall set forth or fairly summarize upon the certificate, or shall state that the Company will furnish to any shareholder upon request and without charge a full statement of such restrictions.

Each certificate representing shares shall state upon its face: the name of the Company; that the Company is organized under the laws of this state; the name of the person or persons to whom issued; the number and class of shares, and the designation of the series, if any, which such certificate represents; and the par value of each share represented by such certificate, or a statement that the shares are without par value.

Section 3. Transfer of Stock. Except as provided in Section 4 of this Article IV, the Company shall register a stock certificate presented to it for transfer if the certificate is properly endorsed by the holder of record or by his duly authorized attorney, and the signature of such person has been

guaranteed as evidenced by a medallion guarantee stamp that is customarily required by stock transfer agents.

Section 4. Off-Shore Offerings. In all offerings of equity securities pursuant to Regulation S of the Securities Act of 1933 (the "Act"), the Company shall require that its stock transfer agent refuse to register any transfer of securities not made in accordance with the provisions of Regulation S, pursuant to registration under the Act or an available exemption under the Act.

Section 5. Lost, Stolen or Destroyed Certificates. The Company shall issue a new stock certificate in the place of any certificate previously issued if the holder of record of the certificate (a) makes proof in affidavit form that it has been lost, destroyed or wrongfully taken; (b) requests the issuance of a new certificate before the Company has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of any adverse claim; (c) gives bond in such form as the Company may direct, to indemnify the Company, the transfer agent, and registrar against any claim that may be made on account of the alleged loss, destruction, or theft of a certificate; and (d) satisfies any other reasonable requirements imposed by the Company.

Article V. Books and Records

Section 1. Books and Records. This Company shall keep correct and complete records and books of account and shall keep minutes of the proceedings of its shareholders, Board of Directors and committees of directors.

This Company shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders, and the number, class and series, if any, of the shares held by each.

Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

Any person who shall have been a holder of record of shares or of voting trust certificates therefor at least six months immediately preceding his demand or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent of the outstanding shares of any class or series of the Company, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose its relevant books and records of accounts, minutes and records of shareholders and to make extracts therefrom.

Section 2. Financial Information. Except for an earlier date as may be required by the Securities Exchange Act of 1934, not later than three months after the close of each fiscal year, this Company shall prepare a balance sheet showing in reasonable detail the financial condition of the Company as of the close of its fiscal year, and a profit and loss statement showing the results of the operations of the Company during its fiscal year.

Upon the written request of any shareholder or holder of voting trust certificates for shares of the Company, the Company shall mail to such shareholder or holder of voting trust certificates a copy

of the most recent such balance sheet and profit and loss statement.

The balance sheets and profit and loss statements shall be filed in the registered office of the Company in this state, shall be kept for at least five years, and shall be subject to inspection during business hours by any shareholder or holder of voting trust certificates, in person or by agent.

Article VI. Dividends

The Board of Directors of this Company may, from time to time, declare and the Company may pay dividends on its shares in cash, property or its own shares, except when the Company is insolvent or when the payment thereof would render the Company insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the certificate of incorporation, subject to the following provisions:

(a) Dividends in cash or property may be declared and paid, except as otherwise provided in this section, only out of the unreserved and unrestricted earned surplus of the Company or out of capital surplus, howsoever arising but each dividend paid out of capital surplus shall be identified as a distribution of capital surplus, and the amount per share paid from such surplus shall be disclosed to the shareholders receiving the same concurrently with the distribution.

(b) Dividends may be declared and paid in the Company's own treasury shares.

(c) Dividends may be declared and paid in the Company's own authorized but unissued shares out of any unreserved and unrestricted surplus of the Company upon the following conditions:

(1) If a dividend is payable in shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(2) If a dividend is payable in shares without a par value, such shares shall be issued at such stated value as shall be fixed by the Board of Directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(d) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the certificate of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

(e) A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the Company shall not be construed to be a share dividend within the meaning of this section.

Article VII. Corporate Seal

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the following: Delaware 2019.

Article VIII. Governing Law: Jurisdiction

These bylaws and the internal affairs of the Company shall be governed by and interpreted under the laws of the State of Delaware, excluding its conflict of laws principles. Unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer (or affiliate of any of the foregoing) of the Company to the Company or the Company's shareholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or the Company's Certificate of Incorporation or Bylaws, or (iv) any other action asserting a claim arising under, in connection with, and governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Company shall be deemed to have notice of and consented to the provisions of this bylaw.

Article IX. Amendment

These bylaws may be repealed or amended, and new bylaws may be adopted, by the Board of Directors or the shareholders in accordance with Section 109 of the DGCL.

**CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF THE
SERIES E CONVERTIBLE PREFERRED STOCK OF
BETTER CHOICE COMPANY INC.**

The undersigned, Michael Young, Chairman of the Board of Directors of Better Choice Company Inc. (the “**Corporation**”), a corporation organized and existing under the Delaware General Corporation Law (the “**DGCL**”), hereby does certify:

That pursuant to the authority expressly conferred upon the Board of Directors of the Corporation by the Corporation’s Certificate of Incorporation, as amended, and Section 141(f) of the DGCL, the Board of Directors on February 4, 2019, adopted the following resolution determining it desirable and in the best interests of the Corporation and its shareholders for the Corporation to create a series of 2,900,000 shares of preferred stock designated as “Series E Convertible Preferred Stock”, none of which shares have been issued.

RESOLVED, that the Board of Directors designates the Series E Convertible Preferred Stock and the number of shares constituting such series, and fixes the rights, powers, preferences, privileges and restrictions relating to such series in addition to any set forth in the Certificate of Incorporation as follows:

TERMS OF SERIES E CONVERTIBLE PREFERRED STOCK

1. Certain Defined Terms. For purposes of this Certificate of Designations, the following terms shall have the following meanings:

- (a) “**1934 Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.
- (b) “**Additional Amount**” means, as of the applicable date of determination, with respect to each share of Series E, all dividends, whether declared or not, on such share of Series E.
- (c) “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that “control” of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.
- (d) “**Applicable Price**” shall have the meaning given to it in Section 8 hereto.
- (e) “**Approved Stock Plan**” means any employee benefit plan or agreement which has been approved by the Board of Directors of the Corporation prior to or subsequent to the Initial Issuance Date pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer, consultant or director for services provided to the Corporation in their capacity as such.

- (f) “**Authorized Failure Shares**” shall have the meaning given to it in Section 11 hereto.
- (g) “**Authorized Share Allocation**” shall have the meaning given to it in Section 11 hereto.
- (h) “**Authorized Share Failure**” shall have the meaning given to it in Section 11 hereto.
- (i) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.
- (j) “**Buy-In Price**” shall have the meaning given to it in Section 5 hereto.
- (k) “**Cavalry**” shall have the meaning given to it in Section 3 hereto.
- (l) “**Certificate of Designations**” means this Certificate Of Designations, Preferences and Rights of the Series E Convertible Preferred Stock of the Corporation.
- (m) “**Closing Date**” shall have the meaning set forth in the Exchange Agreement, which date is the date the Corporation’s predecessor, Sport Endurance Inc., initially issued the Series E pursuant to the terms of the Exchange Agreement.
- (n) “**Closing Sale Price**” means, for any security as of any date, (i) last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, (2) if the foregoing does not apply, the lowest reported sale price for such date on the Principal Market, or (3) fair market value as determined by the Board of Directors of the Corporation.
- (o) “**Common Stock**” means (i) the Corporation’s shares of common stock, \$0.001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.
- (p) “**Consideration Value**” means the value of the applicable Option, Convertible Security as of the date of issuance thereof (as determined by the Board of Directors in good faith).
- (q) “**Conversion Amount**” shall have the meaning given to it in Section 5 hereto.
- (r) “**Conversion Date**” shall have the meaning given to it in Section 5 hereto.
- (s) “**Conversion Failure**” shall have the meaning given to it in Section 5 hereto.
- (t) “**Conversion Notice**” shall have the meaning given to it in Section 5 hereto.

- (u) **“Conversion Price”** shall have the meaning given to it in Section 5 hereto.
- (v) **“Conversion Rate”** shall have the meaning given to it in Section 5 hereto.
- (w) **“Convertible Securities”** means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock
- (x) **“Corporate Event”** shall have the meaning given to it in Section 7 hereto.
- (y) **“Corporation”** shall have the meaning given to it in the preamble hereto.
- (z) **“Dilutive Issuance”** shall have the meaning given to it in Section 8 hereto.
- (aa) **“Dispute Submission Deadline”** shall have the meaning given to it in Section 22 hereto.
- (bb) **“Distributions”** shall have the meaning given to it in Section 14 hereto.
- (cc) **“DTC”** shall have the meaning given to it in Section 5 hereto.
- (dd) **“Excess Shares”** shall have the meaning given to it in Section 5 hereto.
- (ee) **“Exchange Agreement”** means that certain exchange agreement by and among the Corporation and the initial holders of Series E, dated as of the Subscription Date, as may be amended from time in accordance with the terms thereof.
- (ff) **“Excluded Securities”** means (i) shares of Common Stock, restricted stock units or standard options to purchase Common Stock issued to directors, officers or employees of the Corporation for services rendered to the Corporation in their capacity as such pursuant to an Approved Stock Plan, provided that the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Investors; (ii) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Closing Date, provided that the conversion price of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered (other than in accordance with the terms thereof in effect as of the Closing Date) from the conversion price in effect as of the Closing Date (whether pursuant to the terms of such Convertible Securities or otherwise), none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock

issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Investors; (iii) the shares of Common Stock issuable upon conversion of the Series E or otherwise pursuant to the terms of the Certificate of Designations; provided, that the terms of the Certificate of Designations are not amended, modified or changed on or after the Closing Date (other than anti-dilution adjustments pursuant to the terms thereof in effect as of the Closing Date), (iv) reserved (v) securities issued to any placement agent or other registered broker-dealers as reasonable commissions or fees in connection with any financing transactions or securities issued to service providers including investor and public relations firms, (vi) securities issued pursuant to a merger, acquisition or similar transaction; provided that (A) the primary purpose of such issuance is not to raise capital, (B) the purchaser or acquirer of such securities in such issuance solely consists of either (1) the actual participants in such transactions, (2) the actual owners of such assets or securities acquired in such merger, acquisition or similar transaction, (3) the shareholders, partners or members of the foregoing Persons and (4) Persons whose primary business does not consist of investing in securities, and (C) the number or amount (as the case may be) of such shares of Common Stock issued to such Person by the Corporation shall not be disproportionate to such Person's actual ownership of such assets or securities to be acquired by the Corporation (as applicable), or (vii) a strategic transaction approved by a majority of the disinterested directors of the Corporation, provided that (A) any such issuance shall only be to a person which is, itself or through its subsidiaries, an operating company in a business synergistic with the business of the Corporation and in which the Corporation receives benefits in addition to the investment of funds, (B) the primary purpose of such issuance is not to raise capital, (C) the purchaser or acquirer of such securities in such issuance solely consists of either (1) the actual participants in such strategic transactions, (2) the actual owners of such strategic assets or securities acquired, (3) the shareholders, partners or members of the foregoing Persons and (4) Persons whose primary business does not consist of investing in securities, and (D) the number or amount (as the case may be) of such shares of Common Stock issued to such Person by the Corporation shall not be disproportionate to such Person's actual participation in such strategic licensing or development transactions or ownership of such strategic assets or securities to be acquired by the Corporation (as applicable). Provided, however, that securities issued to a registered broker-dealer as compensation for the services rendered in connection for services for transactions described in clauses (vi) and (vii) shall be Excluded Securities.

- (gg) "**Fundamental Transaction**" shall have the meaning given to it in Section 7.
- (hh) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.
- (ii) "**Holder**" or "**Holders**" means a holder of Series E.
- (jj) "**Initial Issuance Date**" means, with respect to each Holder, the date such Holder initially acquired shares of Series E.

(kk) “**Junior Stock**” shall have the meaning given to it in Section 3 hereto.

(ll) “**Late Charge**” shall have the meaning any amount due under the Transaction Documents which is not paid when due which shall result in a late charge being incurred and payable by the Corporation in an amount equal to interest on such amount at the rate of eight percent (8%) per annum from the date such amount was due until the same is paid in full.

(mm) “**Liquidation Event**” means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Corporation and its Subsidiaries, taken as a whole.

(nn) “**Liquidation Funds**” shall have the meaning given to it in Section 13 hereto.

(oo) “**Material Adverse Effect**” means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of the Corporation and its Subsidiaries, if any, individually or taken as a whole, or on the transactions contemplated hereby or on the other Transaction Documents (as defined below), or by the agreements and instruments to be entered into in connection therewith or on the authority or ability of the Corporation to perform its obligations under the Transaction Documents.

(pp) “**Maximum Percentage**” shall have the meaning given to it in Section 5 hereto.

(qq) “**New Issuance Price**” shall have the meaning given to it in Section 8 hereto.

(rr) “**DGCL**” shall have the meaning given to it in the preamble hereto.

(ss) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(tt) “**OTC Markets**” means OTC Markets Group.

(uu) “**Parity Stock**” shall have the meaning given to it in Section 3 hereto.

(vv) “**Person**” means an individual, a limited liability Corporation, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(ww) “**Primary Security**” shall have the meaning given to it in Section 8 hereto.

(xx) “**Principal Market**” means The New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, OTCPink, OTCQB, or OTCQX and any successor markets thereto.

(yy) “**Purchase Rights**” shall have the meaning given to it in Section 7 hereto.

(zz) “**Redemption Premium**” means 125%.

(aaa) “**Register**” shall have the meaning given to it in Section 5 hereto.

(bbb) “**Registered Series E**” shall have the meaning given to it in Section 5 hereto.

(ccc) “**Required Dispute Documentation**” shall have the meaning given to it in Section 22 hereto.

(ddd) “**Required Holders**” shall have the meaning given to it in Section 3 hereto.

(eee) “**Required Reserve Amount**” shall have the meaning given to it in Section 11 hereto.

(fff) “**Reported Outstanding Share Number**” shall have the meaning given to it in Section 5 hereto.

(ggg) “**SEC**” means the Securities and Exchange Commission or the successor thereto.

(hhh) “**Secondary Security**” shall have the meaning given to it in Section 8 hereto.

(iii) “**Senior Preferred Stock**” shall have the meaning given to it in Section 3 hereto.

(jjj) “**Series E**” shall have the meaning given to it in Section 2 hereto.

(kkk) “**Series E Certificates**” shall have the meaning given to it in Section 5 hereto.

(lll) “**Share Delivery Deadline**” shall have the meaning given to it in Section 5 hereto.

(mmm) “**Stated Value**” shall mean \$0.99 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Subscription Date with respect to the Series E.

(nnn) “**Subscription Date**” with respect to any Holder means the date as of which both the Holder and the Corporation have executed the Exchange Agreement.

(ooo) “**Subsidiary**” when used with respect to any Person, means any corporation or other organization, whether incorporated or unincorporated, of which (A) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person (through ownership of securities, by contract or otherwise) or (B) such Person or any subsidiary of such Person is a general partner of any general partnership or a manager of any limited liability company.

(ppp) “**Trading Day**” means any day on which the Common Stock is eligible to be traded on the Principal Market or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder.

(qqq) “**Transaction Documents**” means the Exchange Agreement, this Certificate of Designations, and each of the other agreements and instruments entered into or delivered by the Corporation or any of the Holders in connection with the transactions contemplated by the Exchange Agreement, all as may be amended from time to time in accordance with the terms thereof.

(rrr) “**Transfer Agent**” shall have the meaning given to it in Section 5 hereto.

(sss) “**Triggering Event**” shall have the meaning given to it in Section 6 hereto.

(ttt) “**Triggering Event Conversion**” shall have the meaning given to it in Section 5 hereto.

(uuu) “**Trigger Event Conversion Amount**” shall have the meaning given to it in Section 5 hereto.

(vvv) “**Triggering Event Conversion Date**” shall have the meaning given to it in Section 5 hereto.

(www) “**Triggering Event Conversion Price**” means, with respect to any Triggering Event Conversion that price which shall be the lower of (i) the applicable Conversion Price as in effect on the Trading Day immediately preceding the time of the delivery or deemed delivery of the applicable Conversion Notice, and (ii) 75% of the lowest VWAP of the Common Stock on any Trading Day during the five (5) consecutive Trading Day period ending and including the Trading Day immediately preceding the delivery or deemed delivery of the applicable Conversion Notice (as adjusted for any share dividend,

share split, share combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such period).

- (xxx) **“Triggering Event Notice”** shall have the meaning given to it in Section 6 hereto.
- (yyy) **“Triggering Event Right Commencement Date”** shall have the meaning given to it in Section 6 hereto.
- (zzz) **“Triggering Event Right Expiration Date”** shall have the meaning given to it in Section 6 hereto.
- (aaaa) **“Triggering Event Redemption Notice”** shall have the meaning given to it in Section 6 hereto.
- (bbbb) **“Triggering Event Redemption Price”** shall have the meaning given to it in Section 6 hereto.
- (cccc) **“Triggering Event Redemption Right Period”** shall have the meaning given to it in Section 6 hereto.
- (dddd) **“Valuation Event”** shall have the meaning given to it in Section 8 hereto.
- (eeee) **“Variable Price”** shall have the meaning given to it in Section 8 hereto.
- (ffff) **“Variable Price Securities”** shall have the meaning given to it in Section 8 hereto.

(gggg) **“VWAP”** means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)) (or a similar organization or agency succeeding to its functions of reporting prices, (b) if no volume weighted average price of the Common Stock is reported for the Trading Market, the highest reported price of the Common Stock on the Trading Day during the ten (10) Trading Days preceding such date, or (c) in all other cases, the fair market value of a share of Common Stock as determined by the Board of Directors of the Corporation.

2 . Designation and Number of Shares. There shall hereby be created and established a series of preferred stock of the Corporation designated as “Series E Convertible Preferred Stock” (the **“Series E”**). The authorized number of Series E shall be 2,900,000 shares. Each share of Series E shall have a par value of \$0.001. Capitalized terms not defined herein shall have the meaning as set forth in Section 1 above.

3. Ranking. Except to the extent that the holders of at least a majority of the outstanding Series E which shall include Cavalry Fund I LP (**Cavalry**) as long as it owns at least five percent (5%) of the Series E (the **Required Holders**) expressly consent to the creation of Parity Stock (as defined below) or Senior Preferred Stock (as defined below) in accordance with Section 15, all shares of capital stock of the Corporation shall be junior in rank to all Series E with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (such junior stock is referred to herein collectively as **Junior Stock**). The rights of all such shares of capital stock of the Corporation shall be subject to the rights, powers, preferences and privileges of the Series E. Without limiting any other provision of this Certificate of Designations, without the prior express consent of the Required Holders, voting separate as a single class, the Corporation shall not hereafter authorize or issue any additional or other shares of capital stock that is (i) of senior rank to the Series E in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the **Senior Preferred Stock**), (ii) of pari passu rank to the Series E in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the **Parity Stock**) or (iii) any Junior Stock having a maturity date (or any other date requiring redemption or repayment of such shares of Junior Stock) that is prior to the date no Series E remain outstanding. Except as provided for herein, in the event of the merger or consolidation of the Corporation into another corporation, the Series E shall maintain their relative rights, powers, designations, privileges and preferences provided for herein for a period of at least two years following such merger or consolidation and no such merger or consolidation shall cause result inconsistent therewith.

4. Dividends and Distributions.

(a) Accrual and Payment of Dividends. From and after the Closing Date, cumulative dividends on each share of Series E shall accrue, on a quarterly basis in arrears, at the rate of 10% per annum on the Stated Value, plus the Additional Amount thereon. All accrued dividends on each share of Series E shall be paid upon conversion of the Series E for which the applicable dividend is due. At the option of the Corporation dividends may be paid in cash or stock.

(b) Participating Dividends. Each Holder of Series E shall be entitled to receive dividends or distributions on each share of Series E on an "as converted" into Common Stock basis as provided in Section 4 hereof when and if dividends are declared on the Common Stock by the Board of Directors. Dividends shall be paid in cash or property, as determined by the Board of Directors.

5. Conversion. At any time after the Closing Date, each share of Series E shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock, on the terms and conditions set forth in this Section 5.

(a) Holder's Conversion Right. Subject to the provisions of Section 5(d), at any time or times on or after the Closing Date, each Holder shall be entitled to convert any portion of the outstanding Series E held by such Holder into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 5(c) at the Conversion

Rate (as defined below). The Corporation shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Corporation shall round such fraction of a share of Common Stock up to the nearest whole share. The Corporation shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including fees and expenses of the Transfer Agent (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount (as defined below).

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any share of Series E pursuant to Section 5(a) shall be determined by dividing (x) the Conversion Amount of such share of Series E by (y) the Conversion Price (the “**Conversion Rate**”):

(i) “**Conversion Amount**” means, with respect to each share of Series E, as of the applicable date of determination, the sum of (1) the Stated Value thereof plus (2) the Additional Amount thereon and any accrued and unpaid Late Charges with respect to such Stated Value and Additional Amount as of such date of determination.

(ii) “**Conversion Price**” means, with respect to each share of Series E, as of any Conversion Date or other date of determination, \$0.03, subject to adjustment as provided herein.

(c) Mechanics of Conversion. The conversion of each share of Series E shall be conducted in the following manner:

(i) Optional Conversion. To convert a share of Series E into shares of Common Stock on any date after the Closing Date (a “**Conversion Date**”), a Holder shall deliver (via, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion of the share(s) of Series E subject to such conversion in the form attached hereto as Exhibit I (the “**Conversion Notice**”) to the Corporation. If required by Section 5(c)(iii), within three (3) Trading Days following a conversion of any such Series E as aforesaid, such Holder shall surrender to a nationally recognized overnight delivery service for delivery to the Corporation the original certificates representing the Series E (the “**Series E Certificates**”) so converted as aforesaid (or an indemnification undertaking with respect to the Series E in the case of its loss, theft or destruction as contemplated by Section 17). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Corporation shall transmit by electronic mail an acknowledgment of confirmation, in the form attached hereto as Exhibit II, of receipt of such Conversion Notice to such Holder and the Corporation’s transfer agent (the “**Transfer Agent**”), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the third (3rd) Trading Day following the date of receipt of a Conversion Notice (or such earlier date as

required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Conversion Notice) (the “**Share Delivery Deadline**”), the Corporation shall (1) provided that the Transfer Agent is participating in The Depository Trust Corporation’s (“**DTC**”) Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which such Holder shall be entitled to such Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such Holder or its designee, for the number of shares of Common Stock to which such Holder shall be entitled. If the number of Series E represented by the Series E Certificate(s) submitted for conversion pursuant to Section 5(c)(iii) is greater than the number of Series E being converted, then the Corporation shall, as soon as practicable and in no event later than three (3) Trading Days after receipt of the Series E Certificate(s) and at its own expense, issue and deliver to such Holder (or its designee) a new Series E Certificate (in accordance with Section 17(d)) representing the number of Series E not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series E shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(ii) Corporation’s Failure to Timely Convert. If the Corporation shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to issue to such Holder a certificate for the number of shares of Common Stock to which such Holder is entitled and register such shares of Common Stock on the Corporation’s share register or to credit such Holder’s or its designee’s balance account with DTC for such number of shares of Common Stock to which such Holder is entitled upon such Holder’s conversion of any Conversion Amount (as the case may be) (a “**Conversion Failure**”), then, in addition to all other remedies available to such Holder, (X) the Corporation shall pay in cash to such Holder on each day after the Share Delivery Deadline and during such Conversion Failure an amount equal to 2% of the product of (A) the sum of the number of shares of Common Stock not issued to such Holder on or prior to the Share Delivery Deadline and to which such Holder is entitled, multiplied by (B) the closing price of the Common Stock on the applicable Conversion Date and ending on the applicable Share Delivery Deadline, and (Y) such Holder, upon written notice to the Corporation, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Series E that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Corporation’s obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 5(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Corporation shall fail to issue and

deliver to such Holder (or its designee) a certificate and register such shares of Common Stock on the Corporation's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's exercise hereunder or pursuant to the Corporation's obligation pursuant to clause (II) below and if on or after such Share Delivery Deadline such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that such Holder so is entitled to receive from the Corporation, then, in addition to all other remedies available to such Holder, the Corporation shall, within three (3) Business Days after receipt of such Holder's request and in such Holder's discretion, either: (I) pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Corporation's obligation to so issue and deliver such certificate or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to such Holder a certificate or certificates representing such shares of Common Stock or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (ii).

(iii) Registration; Book-Entry. The Corporation shall maintain a register (the "**Register**") for the recordation of the names and addresses of the Holders of each share of Series E and the Stated Value of the Series E (the "**Registered Series E**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Corporation and each Holder of the Series E shall treat each Person whose name is recorded in the Register as the owner of a share of Series E for all purposes (including the right to receive payments and dividends hereunder) notwithstanding notice to the contrary. A Registered share of Series E may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Series E by such Holder thereof, the Corporation shall record the information contained therein in the Register and issue one or more new Registered Series E in the same aggregate Stated Value as the Stated Value of the

surrendered Registered Series E to the designated assignee or transferee pursuant to Section 17, provided that if the Corporation does not so record an assignment, transfer or sale (as the case may be) of such Registered Series E within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 5, following conversion of any Series E in accordance with the terms hereof, the applicable Holder shall not be required to physically surrender such Series E to the Corporation unless (A) the full or remaining number of Series E represented by the applicable Series E Certificate are being converted (in which event such certificate(s) shall be delivered to the Corporation as contemplated by this Section 5(c)(iii)) or (B) such Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series E upon physical surrender of the applicable Series E Certificate. Each Holder and the Corporation shall maintain records showing the Stated Value, dividends and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to such Holder and the Corporation, so as not to require physical surrender of a Series E Certificate upon conversion. If the Corporation does not update the Register to record such Stated Value, dividends and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, such records of such Holder establishing the number of Series E to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series E, the number of Series E represented by such certificate may be less than the number of Series E stated on the face thereof. Each Series E Certificate shall bear the following legend:

ANY TRANSFEREE OR ASSIGNEE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES E CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 5(c)(iii) THEREOF. THE NUMBER OF SHARES OF SERIES E CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES E CONVERTIBLE PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 5(c)(iii) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES E

CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

(iv) Pro Rata Conversion; Disputes. In the event that the Corporation receives a Conversion Notice from more than one Holder for the same Conversion Date and the Corporation can convert some, but not all, of such Series E submitted for conversion, the Corporation shall convert from each Holder electing to have Series E converted on such date a pro rata amount of such Holder's Series E submitted for conversion on such date based on the number of Series E submitted for conversion on such date by such Holder relative to the aggregate number of Series E submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Series E, the Corporation shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 22.

(d) Limitation on Beneficial Ownership. The Corporation shall not effect the conversion of any of the Series E held by a Holder, and such Holder shall not have the right to convert any of the Series E held by such Holder pursuant to the terms and conditions of this Certificate of Designations and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder would beneficially own in excess of 2.49% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion (which provision may be waived by such Holder by written notice from such Holder to the Corporation, which notice shall be effective 61 calendar days after the date of such notice). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder shall include the number of shares of Common Stock held by such Holder plus the number of shares of Common Stock issuable upon conversion of the Series E with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Series E beneficially owned by such Holder and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Corporation (including any convertible notes, convertible preferred stock or warrants) beneficially owned by such Holder subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 5(d). For purposes of this Section 5(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Series E without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Corporation's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Corporation or (z) any other written notice by the Corporation or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Corporation receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding

Share Number, the Corporation shall notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this Section 5(d), to exceed the Maximum Percentage, such Holder must notify the Corporation of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Corporation shall within one (1) Business Day confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including such Series E, by such Holder since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Series E results in such Holder being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which such Holder's beneficial ownership exceeds the Maximum Percentage (the "Excess Shares") shall be deemed null and void and shall be cancelled ab initio, and such Holder shall not have the power to vote or to transfer the Excess Shares. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Certificate of Designations in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert such Series E pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5(d) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 5(d) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The provisions of this Section 5(d) shall be of no further force or effect if the Holder participates in a subsequent transaction with the Corporation which results in the Holder beneficially owning in excess of 2.49% of the number of shares of the Common Stock outstanding which shall include securities convertible into Common Stock which do not contain a beneficial ownership limitation.

(e) Triggering Event Conversion.

(i) General. Subject to Section 5(d), at any time during the period commencing on the date of the occurrence of a Triggering Event (defined below in Section 6 (a)) and ending on the earlier to occur of (x) the date of the cure of such Triggering Event and (y) twenty (20) Trading Days after the date the Corporation delivers written notice to the Holder of such Triggering Event, a Holder may, at such Holder's option, by delivery of a Conversion Notice to the Corporation (the date of any such Conversion Notice, each an "**Triggering Event Conversion Date**"), convert all, or any number of Series E (such Conversion Amount of the Series E to be converted pursuant to this Section 5(e), the "**Triggering Event**

Conversion Amount) into shares of Common Stock at the Triggering Event Conversion Price (each, a **Triggering Event Conversion**).

(i) Mechanics of Triggering Event Conversion. On any Triggering Event Conversion Date, a Holder may voluntarily convert any Triggering Event Conversion Amount pursuant to Section 5(b)(ii) (with “Triggering Event Conversion Price” replacing “Conversion Price” for all purposes hereunder with respect to such Triggering Event Conversion and “Redemption Premium of the Conversion Amount” replacing “Conversion Amount” in clause (x) of the definition of Conversion Rate above with respect to such Triggering Event Conversion) by designating in the Conversion Notice delivered pursuant to this Section 5(c) of this Certificate of Designations that such Holder is electing to use the Triggering Event Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 5(e), but subject to Section 5(d) until the Corporation delivers shares of Common Stock representing the applicable Triggering Event Conversion Amount to such Holder, such Triggering Event Conversion Amount may be converted by such Holder into shares of Common Stock pursuant to Section 5(c) without regard to this Section 5(e).

6. Triggering Event Redemptions.

(a) Triggering Event. Each of the following events shall constitute a **Triggering Event**:

(i) the Corporation does not meet the current public information requirements under Rule 144 in respect of the shares of Common Stock issuable upon conversion of the Series E;

(ii) the suspension from trading or failure of the Common Stock to be trading or listed (as applicable) on an Principal Market for a period of five (5) consecutive Trading Days;

(iii) the Corporation’s notice, written or oral, to any holder of Series E, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Series E into shares of Common Stock that is requested in accordance with the provisions of this Certificate of Designations, other than pursuant to Section 5(d) hereof;

(iv) at any time following the tenth consecutive day that a Holder’s Authorized Share Allocation (as defined in Section 11 below) is less than 125% of the number of shares of Common Stock that such Holder would be entitled to receive upon a conversion, in full, of all of the Series E then held by such Holder (without regard to any limitations on conversion set forth in this Certificate of Designations);

(v) the Board of Directors fails to declare any dividend to be paid on the applicable dividend date in accordance with Section 4;

(vi) the Corporation's failure to pay to any Holder any dividend on any dividend date (whether or not declared by the Board) or any other amount when and as due under this Certificate of Designations (including, without limitation, the Corporation's failure to pay any redemption payments or amounts hereunder), the Exchange Agreement or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby (in each case, whether or not permitted pursuant to the DGCL), except, in the case of a failure to pay dividends and Late Charges when and as due, in each such case only if such failure remains uncured for a period of at least two (2) Trading Days;

(vii) the Corporation, on two or more occasions, either (A) fails to cure a Conversion Failure by delivery of the required number of shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or (B) fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to such Holder upon conversion of any Series E or as and when required by this Certificate of Designations unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(viii) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of \$100,000 of indebtedness of the Corporation or any of its Subsidiaries;

(ix) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Corporation or any Subsidiary and, if instituted against the Corporation or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(x) the commencement by the Corporation or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Corporation or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Subsidiary or of any substantial part

of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Corporation or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(xi) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Corporation or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Corporation or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Corporation or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(xii) a final judgment or judgments for the payment of money aggregating in excess of \$100,000 are rendered against the Corporation and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the \$100,000 amount set forth above so long as the Corporation provides each Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to each Holder) to the effect that such judgment is covered by insurance or an indemnity and the Corporation or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(xiii) the Corporation and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$100,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Corporation and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in

excess of \$100,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Corporation or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Corporation or any of its Subsidiaries, individually or in the aggregate;

(xiv) other than as specifically set forth in another clause of this Section 6(a), the Corporation or any Subsidiary breaches any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

(xv) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Corporation as to whether any Triggering Event has occurred;

(xvi) any Material Adverse Effect occurs; or

(xvii) any provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested, directly or indirectly, by the Corporation or any Subsidiary, or a proceeding shall be commenced by the Corporation or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof or the Corporation or any of its Subsidiaries shall deny in writing that it has any liability or obligation purported to be created under one or more Transaction Documents.

(b) **Notice of a Triggering Event; Redemption Right.** Upon the occurrence of a Triggering Event with respect to the Series E, the Corporation shall within one (1) Business Day deliver written notice thereof via facsimile or electronic mail and overnight courier (with next day delivery specified) (an “**Triggering Event Notice**”) to each Holder. At any time after the earlier of a Holder’s receipt of a Triggering Event Notice and such Holder becoming aware of a Triggering Event (such earlier date, the “**Triggering Event Right Commencement Date**”) and ending (such ending date, the “**Triggering Event Right Expiration Date**”), and each such period, an “**Triggering Event Redemption Right Period**”) on the twentieth (20th) Trading Day after the later of (x) the date such Triggering Event is cured and (y) such Holder’s receipt of a Triggering Event Notice that includes (I) a reasonable description of the applicable Triggering Event, (II) a certification as to whether, in the opinion of the Corporation, such Triggering Event is capable of being cured

and, if applicable, a reasonable description of any existing plans of the Corporation to cure such Triggering Event and (III) a certification as to the date the Triggering Event occurred and, if cured on or prior to the date of such Triggering Event Notice, the applicable Triggering Event Right Expiration Date, such Holder may require the Corporation to redeem (regardless of whether such Triggering Event has been cured on or prior to the Triggering Event Right Expiration Date) all or any of the Series E by delivering written notice thereof (the “**Triggering Event Redemption Notice**”) to the Corporation, which Triggering Event Redemption Notice shall indicate the number of the Series E such Holder is electing to redeem. Each of the Series E subject to redemption by the Corporation pursuant to this Section 6(b) shall be redeemed by the Corporation at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate with respect to the Conversion Amount in effect at such time as such Holder delivers a Triggering Event Redemption Notice multiplied by (Y) the product of (1) the Redemption Premium multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Triggering Event and ending on the date the Corporation makes the entire payment required to be made under this Section 6(b) (the “**Triggering Event Redemption Price**”). To the extent redemptions required by this Section 6(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Series E by the Corporation, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 6(b), but subject to Section 5(d), until the Triggering Event Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 6(b) (together with any Late Charges thereon) may be converted, in whole or in part, by such Holder into Common Stock pursuant to the terms of this Certificate of Designations. In the event of the Corporation’s redemption of any of the Series E under this Section 6(b), a Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for such Holder. Accordingly, any redemption premium due under this Section 6(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of such Holder’s actual loss of its investment opportunity and not as a penalty. Any redemption upon a Triggering Event shall not constitute an election of remedies by the applicable Holder or any other Holder, and all other rights and remedies of each Holder shall be preserved.

(c) General Redemption Provisions. If a Holder has submitted a Triggering Event Redemption Notice in accordance with Section 6(b) the Corporation shall deliver the applicable Triggering Event Redemption Price to such Holder in cash within five (5) Business Days after the Corporation’s receipt of such Holder’s Triggering Event Redemption Notice. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time a Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of such Holder delivered in writing to the Corporation, the Triggering Event Redemption Price hereunder shall be increased by the amount of such cash payment owed to such Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Corporation’s payment obligation under such other Transaction Document. In the

event of a redemption of less than all of the Series E, the Corporation shall promptly cause to be issued and delivered to such Holder a new Series E Certificate (in accordance with Section 5 (or evidence of the creation of a new Book-Entry) representing the number of Series E which have not been redeemed. In the event that the Corporation does not pay the applicable Triggering Event Redemption Price to a Holder within the time period required for any reason (including, without limitation, to the extent such payment is prohibited pursuant to the DGCL), at any time thereafter and until the Corporation pays such unpaid Triggering Event Redemption Price in full, such Holder shall have the option, in lieu of redemption, to require the Corporation to promptly return to such Holder all or any of the Series E that were submitted for redemption and for which the applicable Triggering Event Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Corporation's receipt of such notice, (x) the applicable Triggering Event Redemption Notice shall be null and void with respect to such Series E, (y) the Corporation shall immediately return the applicable Series E Certificate, or issue a new Series E Certificate (in accordance with Section 5), to such Holder (unless the Series E are held in Book-Entry form, in which case the Corporation shall deliver evidence to such Holder that a Book-Entry for such Series E then exists), and in each case the Additional Amount of such Series E shall be increased by an amount equal to the difference between (1) the applicable Triggering Event Redemption Price (as the case may be, and as adjusted pursuant to this Section 6(c), if applicable) minus (2) the Stated Value portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of such Series E shall be automatically adjusted with respect to each conversion effected thereafter by such Holder to the lowest of (A) the Conversion Price as in effect on the date on which the Triggering Event Redemption Notice is voided, (B) 75% of the lowest Closing Bid Price of the Common Stock during the period beginning on and including the date on which the Triggering Event Redemption Notice is delivered to the Corporation and ending on and including the date on which the Triggering Event Redemption Notice is voided and (C) 75% of the quotient of (I) the sum of the five (5) lowest VWAPs of the Common Stock during the twenty (20) consecutive Trading Day period ending and including the Trading Day immediately preceding the Conversion Date divided by (II) five (5) (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). A Holder's delivery of a notice voiding a Triggering Event Redemption Notice and exercise of its rights following such notice shall not affect the Corporation's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Series E subject to such notice.

(d) Redemption by Multiple Holders. Upon the Corporation's receipt of a Triggering Event Redemption Notice from any Holder for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 5 or Section 6, the Corporation shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to each other Holder by facsimile or electronic mail a copy of such notice. If the Corporation receives one or more Triggering Event Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Corporation's receipt of the initial Triggering Event Redemption Notice and ending on and including the date which is two

(2) Business Days after the Corporation's receipt of the initial Triggering Event Redemption Notice and the Corporation is unable to redeem all principal, interest and other amounts designated in such initial Triggering Event Redemption Notice and such other Triggering Event Redemption Notices received during such seven (7) Business Day period, then the Corporation shall redeem a pro rata amount from each Holder based on the principal amount of the Series E submitted for redemption pursuant to such Triggering Event Redemption Notices received by the Corporation during such seven (7) Business Day period.

7. Rights Upon Issuance of Purchase Rights and Other Corporate Events.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 8 and 9 below, if at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Series E (without taking into account any limitations or restrictions on the convertibility of the Series E) held by such Holder immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance for such Holder until such time or times, if ever, as its right thereto would not result in such Holder exceeding the Maximum Percentage), at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation.

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Corporation shall make appropriate provision to insure that each Holder will thereafter have the right to receive upon a conversion of all the Series E held by such Holder (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which such Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by such Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of the Series E contained in this Certificate of

Designations) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as such Holder would have been entitled to receive had the Series E held by such Holder initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. The provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 7 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion of the Series E contained in this Certificate of Designations. “**Fundamental Transaction**” means the occurrence of the Corporation (i) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (A) consolidating or merging with or into (whether or not the Corporation is the surviving corporation) another Person, (B) selling, assigning, transferring, conveying or otherwise disposing of all or substantially all of the properties or assets of the Corporation or any of its “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X) to one or more Persons, (C) making, or allowing one or more Persons to make, or allowing the Corporation to be subject to or have its Common Stock be subject to or party to one or more Persons making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Persons making or party to, or Affiliated with any Persons making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Persons making or party to, or Affiliated with any Person making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, (D) consummating a stock or share purchase agreement or other business combination (including a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Persons whereby all such Persons, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Persons making or party to, or Affiliated with any Persons making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Persons become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (E) reorganize, recapitalize or reclassify its Common Stock.

8. Rights Upon Issuance of Other Securities.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. If on or after the Subscription Date the Corporation issues or sells, or in accordance with this Section 8(a) is deemed to have issued or sold, any shares of Common Stock, including the issuance or sale of shares of Common Stock owned or held by or for the account of the Corporation, but excluding any Excluded Securities (issued or sold or deemed to have been issued or sold) for a consideration per share (the “**New Issuance Price**”) less than a price

equal to the Conversion Price in effect immediately prior to such issue or sale or deemed issuance or sale (such Conversion Price then in effect is referred to herein as the “**Applicable Price**”) (the foregoing a “**Dilutive Issuance**”), then, immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to the New Issuance Price. For all purposes of the foregoing (including determining the adjusted Conversion Price and the New Issuance Price under this Section 8(a), the following shall be applicable:

(i) Issuance of Options. If the Corporation in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(a)(i), the “lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such share of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For

purposes of this Section 8(a)(ii), the “lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 8(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time, the Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 8(a)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Subscription Date are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 8(a)(iii) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Corporation (as determined by the Required Holders, the “**Primary Security**”, and such Option and/or Convertible Security, the “**Secondary Securities**”), together comprising one integrated

transaction (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Corporation either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing), the consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of Common Stock was issued in such integrated transaction (or was deemed to be issued pursuant to Section 8(a)(i) or 8(a)(ii) above, as applicable) solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (A) the Consideration Value of each such Option, if any, (B) the fair market value (as determined by the Required Holders in good faith) or the Consideration Value, as applicable, and (C) the fair market value (as determined by the Required Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 8(a)(iv). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security) will be deemed to be the net amount of consideration received by the Corporation therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security), the amount of such consideration received by the Corporation will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Corporation for such securities will be the average VWAP of such security for the five (5) Trading Day period immediately preceding the date of receipt. The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Corporation and the Required Holders. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth day following such Valuation Event by an independent, reputable appraiser jointly selected by the Corporation and the Required Holders. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Holders.

(v) Record Date. If the Corporation takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(b) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 8(b) or the Exchange Agreement, if the Corporation in any manner issues or sells or enters into any agreement to issue or sell, any Common Stock, Options or Convertible Securities (any such securities, "**Variable Price Securities**") that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock pursuant to such Options or Convertible Securities, as applicable, at a price which varies with the market price of the shares of Common Stock (the "**Variable Price**"), the Corporation shall provide written notice thereof via (i) electronic mail or (ii) overnight courier to each Holder on the date of such agreement and/or the issuance of such shares of Common Stock, Convertible Securities or Options, as applicable. From and after the date the Corporation enters into such agreement or issues any such Variable Price Securities, each Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of the Series E by designating in the Conversion Notice delivered upon any conversion of Series E that solely for purposes of such conversion such Holder is relying on the Variable Price rather than the Conversion Price then in effect. A Holder's election to rely on a Variable Price for a particular conversion of Series E shall not obligate such Holder to rely on a Variable Price for any future conversions of Series E; provided; further, that the provisions of this Section 8(b) shall not apply to any Excluded Securities.

(c) Calculations. All calculations under this Section 8 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(d) Voluntary Adjustment by Corporation. The Corporation may at any time while any Series E remain outstanding, with the prior consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors.

(e) Excluded Securities. No adjustments contained in this Section 8 shall be made upon the sale or issuance of any Excluded Securities sold or deemed to have been sold.

(f) Termination. The provisions of this Section 8 shall terminate and be of no further force or effect on the earlier of: (A) the two (2) year anniversary of the Closing Date and (B) ninety (90) days following the effective date of any transaction resulting in a merger or consolidation of the Corporation with or into another corporation that is not an Affiliate.

9. Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 8(a), if the Corporation at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of

Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 8(a), if the Corporation at any time on or after the Subscription Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 9 shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 9 occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

10. Noncircumvention. The Corporation hereby covenants and agrees that the Corporation will not, by amendment of its Certificate of Incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders. Without limiting the generality of the foregoing or any other provision of this Certificate of Designations or the other Transaction Documents, the Corporation (a) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Series E above the Conversion Price then in effect, (b) shall take all such actions as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Series E and (c) shall, so long as any Series E are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Series E, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Series E then outstanding (without regard to any limitations on conversion contained herein).

11. Authorized Shares.

(a) Reservation. So long as any Series E remain outstanding, the Corporation shall at all times reserve at least 125% times the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Series E then outstanding (without regard to any limitations on conversions) (the “**Required Reserve Amount**”). The Required Reserve Amount (including each increase in the number of shares so reserved) shall be allocated pro rata among the Holders based on the number of the Series E held by each Holder on the Subscription Date or increase in the number of reserved shares, as the case may be (the “**Authorized Share Allocation**”). In the event that a Holder shall sell or otherwise transfer any of such Holder’s Series E, each transferee shall be allocated a pro rata portion of such Holder’s Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Series E shall be allocated to the remaining Holders of Series E, pro rata based on the number of the Series E then held by the Holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 11(a) and not

in limitation thereof, while any of the Series E remain outstanding the Corporation does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Series E at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Corporation shall immediately take all action necessary to increase the Corporation’s authorized shares of Common Stock to an amount sufficient to allow the Corporation to reserve the Required Reserve Amount for the Series E then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than ninety (90) days after the occurrence of such Authorized Share Failure, the Corporation shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Corporation shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the stockholders that they approve such proposal. In lieu of a meeting of stockholders, the Corporation may effect such action by written consent in accordance with Section 14(c) of the 1934 Act. Except as provided in the first sentence of Section 11(a), in the event that the Corporation is prohibited from issuing shares of Common Stock to a Holder upon any conversion due to the failure by the Corporation to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailability number of shares of Common Stock, the “**Authorized Failure Shares**”), in lieu of delivering such Authorized Failure Shares to such Holder, the Corporation shall pay cash in exchange for the redemption of such portion of the Conversion Amount convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorized Failure Shares and (y) the average Closing Sale Prices of the Common Stock on the Trading Days during the period commencing on the date such Holder delivers the applicable Conversion Notice with respect to such Authorized Failure Shares to the Corporation and ending on the date of such issuance under this Section 11(b). Nothing contained in this Section shall limit any obligations of the Corporation under any provision of the Exchange Agreement.

12. Voting Rights. Subject to Section 5(d) and the Maximum Percentage, each Holder shall be entitled to the whole number of votes equal to the number of shares of Common Stock into which such holder’s Series E would be convertible on the record date for the vote or consent of stockholders, and shall otherwise have voting rights and powers equal to the voting rights and powers of the Common Stock. To the extent that under the DGCL the vote of the holders of the Series E, voting separately as a class or series as applicable, is required to authorize a given action of the Corporation, the affirmative vote or consent of the holders of all of the shares of the Series E, voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, shall constitute the approval of such action by both the class or the series, as applicable. Subject to Section 5(d), to the extent that under the DGCL holders of the Series E are entitled to vote on a matter with holders of shares of Common Stock, voting together as one class, each share of Series E shall entitle the holder

thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in Section 5(d) hereof and the Maximum Percentage) using the record date for determining the stockholders of the Corporation eligible to vote on such matters as the date as of which the Conversion Price is calculated. Holders of the Series E shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled by vote, which notice would be provided pursuant to the Corporation's bylaws and the DGCL.

13. Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Corporation, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), before any amount shall be paid to the holders of any of shares of Junior Stock, but pari passu with any Parity Stock then outstanding, an amount per share of Series E equal to the greater of (A) the Conversion Amount thereof on the date of such payment and (B) the amount per share such Holder would receive if such Holder converted such Series E into Common Stock immediately prior to the date of such payment, provided that if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of Parity Stock, then each Holder and each holder of Parity Stock shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder and such holder of Parity Stock as a liquidation preference, in accordance with their respective certificate of designations (or equivalent), as a percentage of the full amount of Liquidation Funds payable to all holders of Series E and all holders of shares of Parity Stock. To the extent necessary, the Corporation shall cause such actions to be taken by each of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section. All the preferential amounts to be paid to the Holders under this Section shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Corporation to the holders of shares of Junior Stock in connection with a Liquidation Event as to which this Section applies.

14. Distribution of Assets. In addition to any adjustments pursuant to Section 8 and 9, if the Corporation shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, by way of return of capital or otherwise (including any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "**Distributions**"), then each Holder, as holders of Series E, will be entitled to such Distributions as if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series E (without taking into account any limitations or restrictions on the convertibility of the Series E) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that such Holder's right to participate in any such Distribution would result in such Holder exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in

abeyance for such Holder until such time or times as its right thereto would not result in such Holder exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such rights (and any rights under this Section 14 on such initial rights or on any subsequent such rights to be held similarly in abeyance) to the same extent as if there had been no such limitation).

15. Vote to Change the Terms of or Issue Series E. Except as may be provided for in the Exchange Agreement, and in addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, the Corporation shall not: (a) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation or bylaws, or file any certificate of designations or certificate of amendment of any series of shares of preferred stock, if such action would adversely alter or change in any respect the preferences, rights, privileges or powers, or restrictions provided for the benefit, of the Series E, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of Series E; (c) without limiting any provision of Section 2, create or authorize (by reclassification or otherwise) any new class or series of shares that has a preference over or is on a parity with the Series E with respect to dividends or the distribution of assets on the liquidation, dissolution or winding up of the Corporation; (d) purchase, repurchase or redeem any shares of capital stock of the Corporation junior in rank to the Series E (other than pursuant to equity incentive agreements (that have in good faith been approved by the Board of Directors) with employees giving the Corporation the right to repurchase shares upon the termination of services); (e) without limiting any provision of Section 2, pay dividends or make any other distribution on any shares of any capital stock of the Corporation junior in rank to the Series E; (f) issue any Series E or preferred stock other than as provided in Section 2; (g) until the one year anniversary of the Closing Date, enter into (i) any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument, under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due that involves, either individually or in aggregate with other such agreements, obligations greater than \$25,000.00, and (ii) any equipment lease, agreement evidencing purchase money security interests, or other similar transaction in the ordinary course of business that involves, either individually or in aggregate with other such agreements, obligations greater than \$25,000.00 or (h) without limiting any provision of Section 8 and 9, whether or not prohibited by the terms of the Series E, circumvent a right of the Series E.

16. Transfer of Series E. A Holder may transfer some or all of its Series E without the consent of the Corporation, subject to compliance with Section 5 of the Securities Act of 1933.

17. Reissuance of Preferred Certificates

(a) Transfer. If any Series E are to be transferred, the applicable Holder shall surrender the applicable Series E Certificate to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new Series E

Certificate (in accordance with Section 17(d)), registered as such Holder may request, representing the outstanding number of Series E being transferred by such Holder and, if less than the entire outstanding number of Series E is being transferred, a new Series E Certificate (in accordance with Section 17(d)) to such Holder representing the outstanding number of Series E not being transferred. Such Holder and any assignee, by acceptance of the Series E Certificate, acknowledge and agree that, by reason of the provisions of Section 5(c)(i) following conversion of any of the Series E, the outstanding number of Series E represented by the Series E may be less than the number of Series E stated on the face of the Series E.

(b) Lost, Stolen or Mutilated Series E Certificate. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of a Series E Certificate (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the applicable Holder to the Corporation in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of such Series E Certificate, the Corporation shall execute and deliver to such Holder a new Series E Certificate (in accordance with Section 17(d)) representing the applicable outstanding number of Series E.

(c) Series E Certificate Exchangeable for Different Denominations. Each Series E Certificate is exchangeable, upon the surrender hereof by the applicable Holder at the principal office of the Corporation, for a new Series E Certificate or Series E Certificate(s) (in accordance with Section 17(d)) representing in the aggregate the outstanding number of the Series E in the original Series E Certificate, and each such new certificate will represent such portion of such outstanding number of Series E from the original Series E Certificate as is designated by such Holder at the time of such surrender.

(d) Issuance of New Series E Certificate. Whenever the Corporation is required to issue a new Series E Certificate pursuant to the terms of this Certificate of Designations, such new Series E Certificate (i) shall represent, as indicated on the face of such Series E Certificate, the number of Series E remaining outstanding (or in the case of a new Series E Certificate being issued pursuant to Section 17(a) or Section 17(c), the number of Series E designated by such Holder which, when added to the number of Series E represented by the other new Series E Certificates issued in connection with such issuance, does not exceed the number of Series E remaining outstanding under the original Series E Certificate immediately prior to such issuance of new Series E Certificate), and (ii) shall have an issuance date, as indicated on the face of such new Series E Certificate, which is the same as the issuance date of the original Series E Certificate.

18. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Corporation to comply with the terms of this Certificate of

Designations. The Corporation covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Corporation shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Corporation's compliance with the terms and conditions of this Certificate of Designations.

19. Payment of Collection, Enforcement and Other Costs. If (a) any Series E are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of Designations with respect to the Series E or to enforce the provisions of this Certificate of Designations or (b) there occurs any bankruptcy, reorganization, receivership of the Corporation or other proceedings affecting Corporation creditors' rights and involving a claim under this Certificate of Designations, then the Corporation shall pay the costs incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including attorneys' fees and disbursements.

20. Construction; Headings. This Certificate of Designations shall be deemed to be jointly drafted by the Corporation and the Holders and shall not be construed against any such Person as the drafter hereof. The headings of this Certificate of Designations are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designations. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Certificate of Designations instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Certificate of Designations. Terms used in this Certificate of Designations and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Required Holders.

21. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designations shall be deemed to be jointly drafted by the Corporation and all Holders and shall not be construed

against any Person as the drafter hereof. Notwithstanding the foregoing, nothing contained in this Section 21 shall permit any waiver of any provision of Section 19.

22. Dispute Resolution.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to the Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate, (including a dispute relating to the determination of any of the foregoing), the Corporation or the applicable Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Corporation, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such Holder at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Corporation are unable to promptly resolve such dispute relating to such closing bid price, such Closing Sale Price, such Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate, at any time after the second (2nd) Business Day following such initial notice by the Corporation or such Holder (as the case may be) of such dispute to the Corporation or such Holder (as the case may be), then such Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) Such Holder and the Corporation shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 22(a) and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such investment bank (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either such Holder or the Corporation fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Corporation and such Holder or otherwise requested by such investment bank, neither the Corporation nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Corporation and such Holder shall cause such investment bank to determine the resolution of such dispute and notify the Corporation and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Corporation, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Arbitration. Except for a claim for equitable relief, any controversy, dispute or claim arising out of or relating to this Agreement, or its interpretation, application, implementation, breach or enforcement which the parties are unable to resolve by mutual agreement, shall be settled by submission by either party of the controversy, claim or dispute to binding arbitration in New York County, New York (unless the parties agree in writing to a different location), before one arbitrator in accordance with the rules of the American Arbitration Association then in effect. In any such arbitration proceeding, the parties agree to provide all discovery deemed necessary by the arbitrator. The decision and award made by the arbitrator shall be final, binding and conclusive on all parties hereto for all purposes, and judgment may be entered thereon in any court having jurisdiction thereof. Any arbitration proceeding brought under this Agreement shall be subject to all statutes of limitation in the same manner as if an action were filed in a court.

23. Notices. The Corporation shall provide each Holder of Series E with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Whenever notice is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice must be in writing and shall be given in accordance with Section 9(f) of the Exchange Agreement. The Corporation shall provide each Holder with prompt written notice of all actions taken pursuant to this Certificate of Designations, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Corporation shall give written notice to each Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

24. Reserved.

25. Governing Law; Exclusive Jurisdiction. This Certificate of Designations shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise

required by this Certificate of Designations, the Corporation hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York County, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Corporation in any other jurisdiction to collect on the Corporation's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 22. **The Corporation hereby irrevocably waives any right it may have to, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection with or arising out of this Certificate of Designations or any transaction contemplated hereby.**

26. Reserved.

27. Severability. If any provision of this Certificate of Designations is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Certificate of Designations so long as this Certificate of Designations as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

28. Reserved.

29. Stockholder Matters; Amendment

(a) Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, the Certificate of Incorporation, this Certificate of Designations or otherwise with respect to the issuance of Series E may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

(b) Amendment. This Certificate of Designations or any provision hereof (other than Section 5(d)) may be modified or amended or the provisions hereof waived with the written consent of the Corporation and either (i) the Holders of a majority of the Series E currently outstanding, which must include Cavalry as long as Cavalry (or any of its Affiliates) owns at least five percent (5%) of the Series E issued pursuant to the Exchange Agreement, or (ii) Cavalry as long as Cavalry (or any of its Affiliates) owns at least five percent (5%) of the Series E issued pursuant to the Exchange Agreement. No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Exchange Agreement unless the same consideration also is offered to all of the parties to the Transaction Documents. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

30. Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Certificate of Designations, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Corporation or any of its Subsidiaries, the Corporation shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, non-public information relating to the Corporation or any of its Subsidiaries, the Corporation so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, such Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Corporation or any of its Subsidiaries. If the Corporation or any of its Subsidiaries provides material non-public information to a Holder that is not simultaneously filed in a Current Report on Form 8-K and such Holder has not agreed to receive such material non-public information, the Corporation hereby covenants and agrees that such Holder shall not have any duty of confidentiality to the Corporation, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. Nothing contained in this Section 30 shall limit any obligations of the Corporation, or any rights of any Holder, under the Exchange Agreement.

* * * * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations of Series E Convertible Preferred Stock of Better Choice Company Inc. to be signed by its Chairman of the Board on this 7th day of March 2019.

BETTER CHOICE COMPANY INC.

By: /s/ Michael Young
Michael Young, Chairman of the Board

EXHIBIT I

**BETTER CHOICE COMPANY INC.
CONVERSION NOTICE**

Reference is made to the Certificate of Designations, Preferences and Rights of the Series E Convertible Preferred Stock of Better Choice Company Inc. (the "Certificate of Designations"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series E Convertible Preferred Stock, \$0.001 par value per share (the "Series E"), of Better Choice Company Inc., a Delaware corporation (the "Corporation"), indicated below into shares of common stock, \$0.001 par value per share (the "Common Stock"), of the Corporation, as of the date specified below.

Date of Conversion: _____

Aggregate number of Series E to be converted _____

Aggregate Stated Value of such Series E to be converted: _____

Aggregate accrued and unpaid dividends and accrued and unpaid Late Charges with respect to such Series E and such aggregate dividends to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the applicable Series E are being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____,

Name of Registered Holder

By:

Name:

Title:

Tax ID: _____

Facsimile: _____

E-mail Address: _____



ACKNOWLEDGMENT

The Corporation hereby acknowledges this Conversion Notice and hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__ from the Corporation and acknowledged and agreed to by _____.

BETTER CHOICE COMPANY INC.

By: _____
Name:
Title:

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Damian Dalla-Longa, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Better Choice Company Inc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 15, 2019

/s/ Damian Dalla-Longa
Damian Dalla-Longa
Co-Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, David Lelong, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Better Choice Company Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 15, 2019

/s/ David Lelong

David Lelong
Chief Financial Officer
(Principal Accounting Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Better Choice Company Inc. (the "Company") on Form 10-Q for the quarter ended February 28, 2019, as filed with the Securities and Exchange Commission on the date hereof, I, Damian Dalla-Longa, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The quarterly report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and
2. The information contained in the quarterly report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Damian Dalla-Longa

Damian Dalla-Longa
Co-Chief Executive Officer
(Principal Executive Officer)

Date: April 15, 2019

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Better Choice Company Inc. (the "Company") on Form 10-Q for the quarter ended February 28, 2019, as filed with the Securities and Exchange Commission on the date hereof, I, David Lelong, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The quarterly report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and
2. The information contained in the quarterly report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ David Lelong
David Lelong
Chief Financial Officer
(Principal Accounting Officer)

Date: April 15, 2019