
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of report (Date of earliest event reported):
September 11, 2009

NRDC ACQUISITION CORP.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33749
(Commission File Number)

26-0500600
(I.R.S. Employer
Identification No.)

3 Manhattanville Road, Purchase, NY
(Address of Principal Executive Offices)

10577
(Zip Code)

Registrant's telephone number, including area code: **(914) 272-8067**

Not applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing of obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

Letter Agreement

On September 11, 2009, NRDC Acquisition Corp., a Delaware corporation (“NRDC Acquisition”), entered into a letter agreement (the “Letter Agreement”) with Gunnallen Financial, Inc. (“Gunnallen”). The Letter Agreement provides that upon the consummation of the transactions (the “Framework Transactions”) contemplated by the Framework Agreement, dated as of August 7, 2009, between NRDC Acquisition and NRDC Capital Management, LLC, in lieu of Gunnallen’s share of the deferred underwriting discounts and commissions it is entitled to pursuant to the Underwriting Agreement, dated as of October 17, 2007, between NRDC Acquisition and Banc of America Securities LLC, as representative of the underwriters named therein, Gunnallen will receive a fee equal to the product of 1.67% multiplied by the lesser of (i) \$4,000,000 and (ii) 1.5% multiplied by an amount equal to the difference of (1) the value of NRDC Acquisition’s trust account on the closing date of the Framework Transactions, less (2) any amounts paid to NRDC Acquisition stockholders with whom NRDC Acquisition enters into forward or other contracts before the close of the Framework Transactions to purchase such stockholders’ shares, less (3) any amounts paid to NRDC Acquisition stockholders who vote against the Framework Transactions and demand that NRDC Acquisition convert their shares into cash. Such agreement is subject to and contingent upon the consummation of the Framework Transactions.

The foregoing description is qualified in its entirety by reference to the full text of the Letter Agreement, which is attached to this Current Report on Form 8-K as Exhibit 1.1 and is incorporated herein by reference.

Amendment to Framework Agreement

On September 11, 2009, NRDC Acquisition and NRDC Capital Management, LLC entered into an amendment (the “Amendment to Framework Agreement”) to the Framework Agreement, dated as of August 7, 2009 (the “Framework Agreement”), by and between NRDC Acquisition and NRDC Capital Management, LLC, which, as previously announced, contemplate NRDC Acquisition’s continuing its business as a corporation that will qualify as a real estate investment trust for U.S. federal income tax purposes, commencing with its taxable year ending December 31, 2010, under its proposed new name Retail Opportunity Investments Corp. The Amendment to Framework Agreement provides that Exhibits A-1, A-2 and A-3 to the Framework Agreement are replaced by Exhibits A-1, A-2 and A-3 to the Amendment to Framework Agreement. Exhibits A-1, A-2 and A-3 are the proposed amendments to NRDC Acquisition’s second amended and restated certificate of incorporation.

The foregoing description is qualified in its entirety by reference to the full text of the Framework Agreement and the Amendment to Framework Agreement, which are attached with this Current Report on Form 8-K as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No.	Description
1.1	Letter Agreement, dated September 11, 2009, between NRDC Acquisition Corp. and Gunnallen Financial, Inc.
10.1	Framework Agreement, dated as of August 7, 2009, by and between NRDC Acquisition Corp. and NRDC Capital Management, LLC (incorporated by reference to Exhibit 10.4 of the Current Report on Form 8-K filed by the Company on August 10, 2009)
10.2	Amendment to Framework Agreement, dated as of September 11, 2009, by and between NRDC Acquisition Corp. and NRDC Capital Management, LLC

Forward-looking statements

This report and the exhibits hereto include “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. NRDC Acquisition’s actual results may differ from its expectations, estimates and projections and, consequently, you should not rely on these forward looking statements as predictions of future events. Words such as “expect,” “estimate,” “project,” “budget,” “forecast,” “anticipate,” “intend,” “plan,” “may,” “will,” “could,” “should,” “believes,” “predicts,” “potential,” “continue,” and similar expressions are intended to identify such forward-looking statements. These forward-looking statements include, without limitation, NRDC Acquisition’s expectations with respect to future performance, anticipated financial impacts of the proposed transactions, certificate of incorporation and warrant amendments and related transactions; approval of the proposed certificate of incorporation and warrant amendments and related transactions by stockholders and warrant holders, as applicable; the satisfaction of the closing conditions to the proposed transactions, certificate of incorporation and warrant amendments and related transactions; and the timing of the completion of the proposed transactions, certificate of incorporation and warrant amendments and related transactions.

These forward-looking statements involve significant risks and uncertainties that could cause the actual results to differ materially from the expected results. Most of these factors are outside NRDC Acquisition’s control and difficult to predict. Factors that may cause such differences include, but are not limited to, the following:

- Our ability to identify and acquire retail real estate and real estate-related debt investments that meet our investment standards and the time period required for us to acquire our initial portfolio of our target assets;
- The level of rental revenue and net interest income we achieve from our target assets;

- The market value of our assets and the supply of, and demand for, retail real estate and real estate-related debt investments in which we invest;
- The length of the current economic downturn;
- The conditions in the local markets in which we will operate, as well as changes in national economic and market conditions;
- Consumer spending and confidence trends;
- Our ability to enter into new leases or to renew leases with existing tenants at the properties we acquire at favorable rates;
- Our ability to anticipate changes in consumer buying practices and the space needs of tenants;
- The competitive landscape impacting the properties we acquire and their tenants;
- Our relationships with our tenants and their financial condition;
- Our use of debt as part of our financing strategy and our ability to make payments or to comply with any covenants under any borrowings or other debt facilities we obtain;
- The level of our operating expenses, including amounts we are required to pay to our management team and to engage third party property managers;
- Changes in interest rates that could impact the market price of our common stock and the cost of our borrowings; and
- Legislative and regulatory changes (including changes to laws governing the taxation of real estate investment trusts).

Other factors include the possibility that the transactions contemplated by the Framework Agreement do not close, including due to the failure to receive required stockholder and warrant holder approvals, or the failure of other closing conditions.

NRDC Acquisition cautions that the foregoing list of factors is not exclusive. Additional information concerning these and other risk factors is contained in NRDC Acquisition's most recent filings with the Securities and Exchange Commission ("SEC") and in the definitive proxy statement to be used in connection with the transactions contemplated by the Framework Agreement, as described below. All subsequent written and oral forward-looking statements concerning NRDC Acquisition, the Framework Agreement, the related transactions or other matters and attributable to NRDC Acquisition or any person acting on its behalf are expressly qualified in their entirety by the cautionary statements above. NRDC Acquisition cautions readers not to place undue reliance upon any forward-looking statements, which speak only as of the date made. NRDC Acquisition does not undertake or accept any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement to reflect any change in its expectations or any change in events, conditions or circumstances on which any such statement is based.

Additional Information

NRDC Acquisition has filed a preliminary proxy statement with the SEC in connection with the proposed transactions, certificate of incorporation amendments and the warrant amendments and to mail a definitive proxy statement and other relevant documents to NRDC Acquisition's stockholders and warrant holders. NRDC Acquisition's stockholders and warrant holders and other interested persons are advised to read the preliminary proxy statement, and, when available, amendments thereto, if any, and the definitive proxy statement in connection with solicitation of proxies for the special meetings of NRDC Acquisition's stockholders and warrant holders to be held to approve the transactions, certificate of incorporation amendments and the warrant amendments because this proxy statement will contain important information about NRDC Acquisition and the proposed transactions. Such

persons can also read NRDC Acquisition's final prospectus from its initial public offering dated October 23, 2007, its annual report on form 10-K for the fiscal year ended December 31, 2008, which was filed with the SEC on March 13, 2009, as amended ("Annual Report") and other reports as filed with the SEC, for a description of the security holdings of NRDC Acquisition's officers and directors and their affiliates and their other respective interests in the successful consummation of the proposed transactions. The definitive proxy statement will be mailed to stockholders and warrant holders as of a record date to be established for voting on the proposed transactions, certificate of incorporation amendments and the warrant amendments and related transactions. Stockholders and warrant holders will also be able to obtain a copy of the preliminary and definitive proxy statements, without charge, once available, at the SEC's Internet site at <http://www.sec.gov> or by directing a request to: NRDC Acquisition Corp., 3 Manhattanville Road, Purchase, NY 10577, Attention: Joseph Roos, telephone (914) 272-8066.

Participation in Solicitation

NRDC Acquisition, and its respective directors, executive officers, affiliates and other persons may be deemed to be participants in the solicitation of proxies for the special meetings of NRDC Acquisition's stockholders and NRDC Acquisition's warrant holders to approve the proposed transaction. A list of the names of those directors and officers and descriptions of their interests in NRDC Acquisition is contained in NRDC Acquisition's Annual Report. NRDC Acquisition's stockholders and warrant holders may also obtain additional information about the interests of its directors and officers in the transactions by reading the preliminary proxy statement and other relevant materials to be filed by NRDC Acquisition with the SEC when they become available.

Disclaimer

This report (and the exhibits hereto) is not a proxy statement or solicitation of a proxy, consent or authorization with respect to any securities or in respect of the proposed transactions.

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 hereunto duly authorized.

NRDC ACQUISITION CORP.

Dated: September 16, 2009

By: /s/ Richard A. Baker
Richard A. Baker
Chief Executive Officer

EXHIBIT INDEX

Exhibit No.	Description
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10.2	Amendment to Framework Agreement, dated as of September 11, 2009, by and between NRDC Acquisition Corp. and NRDC Capital Management, LLC

NRDC ACQUISITION CORP.
3 Manhattanville Road
Purchase, NY 10577

September 11, 2009

GUNNALLEN FINANCIAL, INC.
5002 West Waters Avenue
Tampa, FL 33634

Dear Sirs:

Reference is made to that certain Underwriting Agreement (the "Underwriting Agreement"), dated October 17, 2007, between NRDC Acquisition Corp. (the "Company") and Banc of America Securities LLC, as representative of the several underwriters, including Gunnallen Financial, Inc. (the "Underwriter"), in the Company's initial public offering (the "IPO"). Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the Underwriting Agreement.

The Company and NRDC Capital Management, LLC (the "Sponsor") are discussing entering into a proposed transaction (the "Transaction") whereby the Company will, among other things, seek the approval of the Company's stockholders to amend its certificate of incorporation and elect to become a Delaware real estate investment trust. As a condition to the Sponsor's willingness to enter into the Transaction, the Sponsor has requested that the Underwriter (in its own capacity and not on behalf of the other Underwriters) agree as follows: in lieu of the Underwriter's share of the deferred underwriting discounts and commissions it is entitled to pursuant to Section 3(v) of the Underwriting Agreement, upon the consummation of the Transaction, the Underwriter will receive a fee (the "Transaction Fee") equal to the product of (x) 1.67% multiplied by (y) the lesser of (A) \$4,000,000 and (B) 1.5% multiplied by an amount equal to the difference of (1) the value of the Trust Account on the closing date of the Transaction, less (2) any amounts paid to the Company's stockholders with whom the Company enters into forward or other contracts before the close of the Transaction to purchase such stockholders' shares, less (3) any amounts paid to stockholders of the Company who vote against the Transaction and demand that the Company convert their shares into cash. Such agreement is subject to and contingent upon the consummation of the Transaction. For the purposes of the Trust Agreement, the Transaction Fee will be deemed to be the Deferred Discount and the procedures governing the payment of any Deferred Discount under such Trust Agreement will similarly apply to the Transaction Fee.

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Very truly yours,

NRDC ACQUISITION CORP.

By: /s/ Richard A. Baker

Name: Richard A. Baker
Title: Chief Executive Officer

Accepted and Agreed:

GUNNALLEN FINANCIAL, INC.

By: /s/ John Deeks

Name: John Deeks

Title: Syndicate Manager

AMENDMENT TO FRAMEWORK AGREEMENT

THIS AMENDMENT TO FRAMEWORK AGREEMENT, dated as of September 11, 2009 (this “Amendment”), is by and between **NRDC ACQUISITION CORP.**, a Delaware corporation (the “Company”), and **NRDC CAPITAL MANAGEMENT, LLC**, a Delaware limited liability company (the “Sponsor”).

WHEREAS, the Company and the Sponsor are parties to that certain Framework Agreement dated as of August 7, 2009 (the “Framework Agreement ”); and

WHEREAS, the parties desire to amend the Framework Agreement upon the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms use herein and not otherwise defined herein shall have the meanings ascribed to them in the Framework Agreement.

2. Amendment to Framework Agreement.

(a) Section 3.17 of the Framework Agreement is hereby amended by deleting the words “CS Capital Advisors, LLC” and inserting in lieu thereof the words “CSCA Capital Advisors, LLC”.

(b) Exhibit A-1 to the Framework Agreement is hereby deleted in its entirety and replaced with Exhibit A-1 attached hereto.

(c) Exhibit A-2 to the Framework Agreement is hereby deleted in its entirety and replaced with Exhibit A-2 attached hereto.

(d) Exhibit A-3 to the Framework Agreement is hereby deleted in its entirety and replaced with Exhibit A-3 attached hereto.

3. Amendment. All references in the Framework Agreement (and in the other agreements, documents and instruments entered into in connection therewith) to the “Framework Agreement” shall be deemed for all purposes to refer to the Framework Agreement, as amended by this Amendment.

4. Remaining Provisions of Framework Agreement. Except as expressly provided herein, the provisions of the Framework Agreement shall remain in full force and effect in accordance with their terms and shall be unaffected by this Amendment.

5. Counterparts. This Amendment may be executed in counterparts, each of which when executed shall be deemed an original and both of which when executed shall be deemed one and the same instrument.

6. Headings. The headings to this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

7. Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the principles of conflicts of law of any jurisdiction.

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the authorized officers of each of the undersigned as of the date first above written.

NRDC ACQUISITION CORP.

By: /s/ Richard A. Baker
Name: Richard A. Baker
Title: CEO

NRDC CAPITAL MANAGEMENT, LLC

By: /s/ Francis Casale
Name: Francis Casale
Title: Secretary

EXHIBIT A-1

Form of Initial Charter Amendment

SECOND CERTIFICATE OF AMENDMENT TO THE
SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NRDC ACQUISITION CORP.

PURSUANT TO SECTION 242 OF THE GENERAL CORPORATION LAW
OF THE STATE OF DELAWARE

NRDC Acquisition Corp. (the “**Corporation**”), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”), hereby certifies that:

1. The Corporation’s original Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on July 10, 2007, its Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on July 25, 2007, its Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on September 4, 2007 and its Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on October 19, 2007 (the “**Second Amended and Restated Certificate of Incorporation**”).

2. The Board of Directors of the Corporation, pursuant to Section 242 of the General Corporation Law, duly adopted a resolution setting forth proposed amendments to the Second Amended and Restated Certificate of Incorporation and declaring such amendments advisable. The stockholders of the Corporation, pursuant to Section 242 of the General Corporation Law, duly approved and adopted such proposed amendment at a special meeting of stockholders duly called and held upon notice in accordance with Section 222 of the General Corporation Law.

3. The Second Amended and Restated Certificate of Incorporation is hereby amended by deleting the first two sentences of ARTICLE Sixth thereof in their entirety and inserting the following in lieu thereof:

“The introduction and the following provisions (A) through (G) of this ARTICLE SIXTH shall apply during the period commencing upon the filing of this Second Amended and Restated Certificate of Incorporation and terminating upon the consummation of any Business Combination (as defined below), and may not be amended during the Target Business Acquisition Period (as defined below) except as provided in subparagraph (G) of this ARTICLE SIXTH. A “**Business Combination**” shall mean the (i) acquisition by the Corporation of one or more assets or control of one or more operating businesses (collectively, the “**Target Business**”), through a merger, capital stock exchange, stock purchase, asset acquisition or other similar business combination having, collectively, a fair market value (as calculated in accordance with the requirements set forth below) of at least 80% of the amount in the Trust Fund (excluding the deferred underwriting discounts and commissions and taxes payable) at the time of such acquisition; provided, that any acquisition of multiple assets or operating businesses shall occur contemporaneously with one another; or (ii) consummation of substantially all of the transactions contemplated by the Framework Agreement, dated as of August 7, 2009, by and between the Corporation and NRDC Capital Management, LLC (the “**Framework Transaction**”).”

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF, NRDC Acquisition Corp. has caused this Certificate of Amendment to be signed by _____, its Chief Executive Officer, on the ____ day of October, 2009.

[Name], Chief Executive Officer

EXHIBIT A-2

Form of Second Charter Amendment

**THIRD CERTIFICATE OF AMENDMENT TO THE
SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

OF

NRDC ACQUISITION CORP.

**PURSUANT TO SECTION 242 OF THE GENERAL CORPORATION LAW
OF THE STATE OF DELAWARE**

NRDC Acquisition Corp. (the “**Corporation**”), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”), hereby certifies that:

1. The Corporation’s original Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on July 10, 2007, its Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on July 25, 2007, its Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on September 4, 2007, its Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on October 19, 2007 and its Second Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on October [•], 2009 (the “**Second Amended and Restated Certificate of Incorporation**”).

2. The Board of Directors of the Corporation, pursuant to Section 242 of the General Corporation Law, duly adopted a resolution setting forth proposed amendments to the Second Amended and Restated Certificate of Incorporation and declaring such amendments advisable. The stockholders of the Corporation, pursuant to Section 242 of the General Corporation Law, duly approved and adopted such proposed amendment at a special meeting of stockholders duly called and held upon notice in accordance with Section 222 of the General Corporation Law.

3. The Second Amended and Restated Certificate of Incorporation is hereby amended by deleting ARTICLE Fifth thereof in its entirety and inserting the following in lieu thereof:

“ARTICLE Fifth: Reserved.”

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF, NRDC Acquisition Corp. has caused this Certificate of Amendment to be signed by _____, its Chief Executive Officer, on the ____ day of October, 2009.

[Name], Chief Executive Officer

EXHIBIT A-3

Form of Third Charter Amendment

FOURTH CERTIFICATE OF AMENDMENT TO THE
SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NRDC ACQUISITION CORP.

PURSUANT TO SECTION 242 OF THE GENERAL CORPORATION LAW
OF THE STATE OF DELAWARE

NRDC Acquisition Corp. (the “**Corporation**”), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”), hereby certifies that:

1. The Corporation’s original Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on July 10, 2007, its Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on July 25, 2007, its Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on September 4, 2007, its Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of the State of Delaware on October 19, 2007, its Second Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on October [•], 2009 and its Third Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on October [•], 2009 (the “**Second Amended and Restated Certificate of Incorporation**”).

2. The Board of Directors of the Corporation, pursuant to Section 242 of the General Corporation Law, duly adopted a resolution setting forth proposed amendments to the Second Amended and Restated Certificate of Incorporation and declaring such amendments advisable. The stockholders of the Corporation, pursuant to Section 242 of the General Corporation Law, duly approved and adopted such proposed amendment at a special meeting of stockholders duly called and held upon notice in accordance with Section 222 of the General Corporation Law.

3. The Second Amended and Restated Certificate of Incorporation is hereby amended by deleting ARTICLE First thereof in its entirety and inserting the following in lieu thereof:

“ARTICLE First: The name of the Corporation is “Retail Opportunity Investments Corp.” (hereinafter sometimes referred to as the “**Corporation**”).”

4. The Second Amended and Restated Certificate of Incorporation is hereby amended by deleting the proviso in the second sentence of ARTICLE Third thereof in its entirety.

5. The Second Amended and Restated Certificate of Incorporation is hereby amended by deleting paragraph (a) of ARTICLE Fourth thereof in its entirety and inserting the following in lieu thereof:

“(a) *Authorized Shares of Stock*. The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 550,000,000 shares, of which:

- (i) 500,000,000 shares shall be Common Stock of the par value of \$0.0001 per share (the “**Common Stock**”); and
- (ii) 50,000,000 shares shall be Preferred Stock of the par value of \$0.0001 per share (the “**Preferred Stock**”).

Effective at 4:01 p.m., eastern time, on September 4, 2007 (the “**Effective Time**”), each five (5) shares of Common Stock of the Corporation issued and outstanding immediately prior to the Effective Time (the “**Old Common Stock**”) shall be automatically reclassified as and split (the “**Reclassification**”), without any further action, into six (6) fully-paid and nonassessable shares of Common Stock of the Corporation, par value \$.0001 per share (the “**New Common Stock**”).

Each stock certificate that, immediately prior to the Effective Time, represented shares of Old Common Stock (a “**Certificate**”) will from and after the Effective Time represent, automatically and without the necessity of surrendering the same for exchange, the number of shares of New Common Stock, rounded down to the nearest whole number, determined by multiplying the number of shares of Old Common Stock represented by such Certificate immediately prior to the Effective Time by six fifths (6/5). No fractional shares of New Common Stock of the Corporation shall be issued in the Reclassification.”

6. The Second Amended and Restated Certificate of Incorporation is hereby amended by deleting ARTICLE Sixth thereof in its entirety and inserting the following in lieu thereof:

“ARTICLE Sixth:

(a) *Definitions*. For the purpose of this Second Amended and Restated Certificate of Incorporation, the following terms shall have the following meanings:

“**Aggregate Stock Ownership Limit**” shall mean not more than 9.8 percent (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of Capital Stock.

“**Beneficial Ownership**” shall mean ownership of Capital Stock by a Person, whether the interest in the shares of Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms “**Beneficial Owner**,” “**Beneficially Owns**” and “**Beneficially Owned**” shall have the correlative meanings.

“**Business Day**” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

“**Capital Stock**” shall mean all classes or series of stock of the Corporation, including, without limitation, Common Stock and Preferred Stock.

“**Charitable Beneficiary**” shall mean one or more beneficiaries of the Trust as determined pursuant to clause (c)(vi) of this ARTICLE SIXTH, provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

“**Common Stock Ownership Limit**” shall mean not more than 9.8 percent (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of Common Stock of the Corporation.

“**Constructive Ownership**” shall mean ownership of Capital Stock by a Person, whether the interest in the shares of Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms “**Constructive Owner**,” “**Constructively Owns**” and “**Constructively Owned**” shall have the correlative meanings.

“**Excepted Holder**” shall mean a stockholder of the Corporation for whom an Excepted Holder Limit is created by this Second Amended and Restated Certificate of Incorporation or by the Board of Directors pursuant to clause (b)(vii) of this ARTICLE SIXTH.

“**Excepted Holder Limit**” shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Directors pursuant to clause (b)(vii) of this ARTICLE SIXTH and subject to adjustment pursuant to clause (b)(viii) of this ARTICLE SIXTH, the percentage limit established by the Board of Directors pursuant to clause (b)(vii) of this ARTICLE SIXTH.

“**Excess Securities**” shall have the meaning set forth clause (b)(i)(B)(1) of this ARTICLE SIXTH.

“ **Initial Date**” shall mean the date upon which the Second Amended and Restated Certificate of Incorporation containing this ARTICLE SIXTH are accepted for record by the Delaware Secretary of State.

“ **IPO**” shall mean the Corporation’s initial public offering.

“ **Market Price**” on any date shall mean, with respect to any class or series of outstanding shares of Capital Stock, the Closing Price for such Capital Stock on such date. The “ **Closing Price**” on any date shall mean the last sale price for such Capital Stock, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Capital Stock, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE Amex or, if such Capital Stock is not listed or admitted to trading on the NYSE Amex, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Capital Stock is listed or admitted to trading or, if such Capital Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system that may then be in use or, if such Capital Stock is not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Capital Stock selected by the Board of Directors of the Corporation or, in the event that no trading price is available for such Capital Stock, the fair market value of the Capital Stock, as determined in good faith by the Board of Directors of the Corporation.

“ **Person**” shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit applies.

“ **Prohibited Owner**” shall mean, with respect to any purported Transfer, any Person who, but for the provisions of clause (b)(i) of this ARTICLE SIXTH, would Beneficially Own or Constructively Own shares of Capital Stock in excess of the Aggregate Stock Ownership Limit, and if appropriate in the context, shall also mean any Person who would have been the record owner of the shares that the Prohibited Owner would have so owned.

“ **Restriction Termination Date**” shall mean the first day after the Initial Date on which the Corporation determines pursuant to ARTICLE FIFTH above that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of shares of Capital Stock set forth herein is no longer required in order for the Corporation to qualify as a REIT.

“ **Transfer**” shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial Ownership or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Capital Stock or the right to vote or receive dividends on Capital Stock, including (a) the granting or exercise of any option (or any disposition of any option), (b) any disposition of any securities or rights convertible into or exchangeable for Capital Stock or any interest in Capital Stock or any exercise of any such conversion or exchange right and (c) Transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Capital Stock; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or

otherwise. The terms “***Transferring***” and “***Transferred***” shall have the correlative meanings.

“***Trust***” shall mean any trust provided for in clause (c)(i) of this ARTICLE SIXTH.

“***Trustee***” shall mean the Person unaffiliated with the Corporation and a Prohibited Owner, that is appointed by the Corporation to serve as trustee of the Trust.

(b) *Capital Stock*.

(i) *Ownership Limitations*. During the period commencing on the Initial Date and prior to the Restriction Termination Date, but subject to clause (d) of this ARTICLE SIXTH:

(A) Basic Restrictions.

(1) (x) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own shares of Capital Stock in excess of the Aggregate Stock Ownership Limit, (y) no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own shares of Common Stock in excess of the Common Stock Ownership Limit and (z) no Excepted Holder shall Beneficially Own or Constructively Own shares of Capital Stock in excess of the Excepted Holder Limit for such Excepted Holder.

(2) No Person shall Beneficially Own or Constructively Own shares of Capital Stock to the extent that such Beneficial Ownership or Constructive Ownership of Capital Stock would result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial Ownership or Constructive Ownership that would result in the Corporation owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Corporation from such tenant could cause the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(3) Any Transfer of shares of Capital Stock that, if effective, would result in the Capital Stock being beneficially owned by less than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void ab initio, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(B) *Transfer in Trust*. If any Transfer of shares of Capital Stock or other event occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning shares of Capital Stock in violation of clause (b)(i)(A)(1) or (2) of this ARTICLE SIXTH,

(1) then (x) that number of shares of the Capital Stock the Beneficial Ownership or Constructive Ownership of which otherwise would cause such Person to violate clause (b)(i)(A)(1) or (2) of this ARTICLE SIXTH (rounded up to the nearest whole share) (“***Excess Securities***”) shall be automatically transferred to a Trust for the benefit of a Charitable Beneficiary, as described in clause (c) of this ARTICLE SIXTH, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such shares or (y) the Corporation shall, at its option, redeem such Excess Securities from the transferor, in the case of a Transfer, or person, in the case of another event, for, at its option, cash, a note or other securities of the Corporation; or

(2) if the transfer to the Trust described in clause (A) of this sentence would not be effective for any reason to prevent the violation of clause

(b)(i)(A)(1) or (2) of this ARTICLE SIXTH, then the Transfer of the Excess Securities shall be void ab initio, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(ii) *Remedies for Breach.* If the Board of Directors of the Corporation or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of clause (b)(i) of this ARTICLE SIXTH or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any shares of Capital Stock in violation of clause (b)(i) of this ARTICLE SIXTH (whether or not such violation is intended), the Board of Directors or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Corporation to redeem shares, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of clause (b)(i) of this ARTICLE SIXTH shall automatically result in the transfer to the Trust described above, and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Directors or a committee thereof.

(iii) *Notice of Restricted Transfer.* Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of shares of Capital Stock that will or may violate clause (b)(i)(A)(1) of this ARTICLE SIXTH or any Person who would have owned shares of Capital Stock that resulted in a transfer to the Trust pursuant to the provisions of clause (b)(i)(B) of this ARTICLE SIXTH shall immediately give written notice to the Corporation of such event or, in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer on the Corporation's qualification as a REIT.

(iv) *Owners Required To Provide Information. From the Initial Date and prior to the Restriction Termination Date:*

(A) every owner of five percent or more (or such lower percentage as required by the Code or the U.S. Treasury Department regulations promulgated thereunder) of the outstanding shares of Capital Stock, within 30 days after the end of each taxable year, shall give written notice to the Corporation stating the name and address of such owner, the number of shares of Capital Stock and other shares of the Capital Stock Beneficially Owned and a description of the manner in which such shares are held. Each such owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's qualification as a REIT and to ensure compliance with the Aggregate Stock Ownership Limit; and

(B) each Person who is a Beneficial Owner or Constructive Owner of Capital Stock and each Person (including the stockholder of record) who is holding Capital Stock for a Beneficial Owner or Constructive Owner shall provide to the Corporation such information as the Corporation may request, in good faith, in order to determine the Corporation's qualification as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

(v) *Remedies Not Limited.* Subject to ARTICLE FIFTH, nothing contained in this clause (b) shall limit the authority of the Board of Directors of the Corporation to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders in preserving the Corporation's qualification as a REIT.

(vi) *Ambiguity.* In the case of an ambiguity in the application of any of the provisions of this clause (b), clause (c), or any definition contained in clause (a), the

Board of Directors of the Corporation shall have the power to determine the application of the provisions of this clause (b) or clause (c) or any such definition with respect to any situation based on the facts known to it. In the event this clause (b) or clause (c) requires an action by the Board of Directors and this Second Amended and Restated Certificate of Incorporation fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of clauses (a), (b) or (c) of this ARTICLE SIXTH. Absent a decision to the contrary by the Board of Directors (which the Board may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in clause (b)(ii) of this ARTICLE SIXTH) acquired Beneficial Ownership or Constructive Ownership of Capital Stock in violation of clause (b)(i) of this ARTICLE SIXTH, such remedies (as applicable) shall apply first to the shares of Capital Stock which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such shares of Capital Stock based upon the relative number of the shares of Capital Stock held by each such Person.

(vii) *Exceptions.*

(A) Subject to clause (b)(i)(A)(2) of this ARTICLE SIXTH, the Board of Directors of the Corporation, in its sole discretion, may exempt (prospectively or retroactively) a Person from the Aggregate Stock Ownership Limit and the Common Stock Ownership Limit, as the case may be, and may establish or increase an Excepted Holder Limit for such Person if:

(1) the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial Ownership or Constructive Ownership of such shares of Capital Stock will violate clause (b)(i)(A)(2) of this ARTICLE SIXTH;

(2) such Person does not and represents that it will not own, actually or Constructively, an interest in a tenant of the Corporation (or a tenant of any entity owned or controlled by the Corporation) that would cause the Corporation to own, actually or Constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact (for this purpose, a tenant from whom the Corporation (or an entity owned or controlled by the Corporation) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the opinion of the Board of Directors of the Corporation, rent from such tenant would not adversely affect the Corporation's ability to qualify as a REIT shall not be treated as a tenant of the Corporation); and

(3) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in clause (b)(i) through clause (b)(vi) of this ARTICLE SIXTH) will result in such shares of Capital Stock being automatically transferred to a Trust in accordance with clause (b)(i)(B) and clause (c) of this ARTICLE SIXTH.

(B) Prior to granting any exception pursuant to clause (b)(vii)(A) of this ARTICLE SIXTH, the Board of Directors of the Corporation may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Directors may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(C) Subject to clause (b)(i)(A)(2) of this ARTICLE SIXTH an underwriter which participates in a public offering or a private placement of Capital Stock (or securities convertible into or exchangeable for Capital Stock) may Beneficially Own or Constructively Own shares of Capital Stock (or securities convertible into or exchangeable for Capital Stock) in excess of the Aggregate Stock Ownership Limit, the Common Stock Ownership Limit, or both such limits, but only to the extent necessary to facilitate such public offering or private placement.

(D) The Board of Directors may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, or (2) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Common Stock Ownership Limit.

(viii) *Increase in Aggregate Stock Ownership and Common Stock Ownership Limits.* Subject to clause (b)(i)(A)(2) of this ARTICLE SIXTH, the Board of Directors may from time to time increase the Common Stock Ownership Limit and the Aggregate Stock Ownership Limit for one or more Persons and decrease the Common Stock Ownership Limit and the Aggregate Stock Ownership Limit for all other Persons; provided, however, that the decreased Common Stock Ownership Limit and/or Aggregate Stock Ownership Limit will not be effective for any Person whose percentage ownership in Common Stock is in excess of such decreased Common Stock Ownership Limit and/or whose percentage ownership in Capital Stock is in excess of such decreased Aggregate Stock Ownership Limit, as applicable, until such time as such Person's percentage of Common Stock equals or falls below the decreased Common Stock Ownership Limit and/or such Person's percentage of Capital Stock equals or falls below the decreased Aggregate Stock Ownership Limit, as applicable, but any further acquisition of Capital Stock in excess of such percentage ownership of Common Stock and/or Capital Stock will be in violation of the Common Stock Ownership Limit and/or Aggregate Stock Ownership Limit, as applicable, and, provided further, that the new Common Stock Ownership Limit and/or Aggregate Stock Ownership Limit would not allow five or fewer Persons to Beneficially Own or Constructively Own more than 49.9% in value of the outstanding Capital Stock.

(ix) *Legend.* Each certificate for shares of Capital Stock, if certificated, or the written statement of information in lieu of a certificate shall bear substantially the following legend:

The shares represented by this certificate are subject to restrictions on Beneficial Ownership and Constructive Ownership and Transfer for the purpose, among others, of the Corporation's maintenance of its qualification as a Real Estate Investment Trust under the Code. Subject to certain further restrictions and except as expressly provided in this Second Amended and Restated Certificate of Incorporation, (i) no Person may Beneficially Own or Constructively Own shares of the Corporation's Common Stock in excess of 9.8 percent (in value or number of shares) of the outstanding shares of Common Stock of the Corporation unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (ii) no Person may Beneficially Own or Constructively Own shares of Capital Stock of the Corporation in excess of 9.8 percent (in value or number of shares) of the total outstanding shares of Capital Stock of the Corporation, unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (iii) no Person may Beneficially Own or Constructively Own Capital Stock that would result in the Corporation being "closely held" under Section 856(h) of the Code or otherwise cause the Corporation to fail to qualify as a REIT; and (iv) no Person may Transfer shares of Capital Stock if such Transfer would result in the Capital Stock of the Corporation being owned by fewer than 100 Persons. Any Person who Beneficially Owns or Constructively Owns or

attempts to Beneficially Own or Constructively Own shares of Capital Stock which causes or will cause a Person to Beneficially Own or Constructively Own shares of Capital Stock in excess or in violation of the above limitations must immediately notify the Corporation. If the restrictions on transfer or ownership provided in (i), (ii) or (iii) above are violated, the shares of Capital Stock in excess or in violation of the above limitations will be (x) automatically transferred to a Trustee of a Trust for the benefit of one or more Charitable Beneficiaries or (y) the Corporation shall, at its option, redeem such shares of Capital Stock from the transferor, in the case of a Transfer, or person, in the case of another event, for, at its option, cash, a note or other securities of the Corporation. In addition, the Corporation may redeem shares upon the terms and conditions specified by the Board of Directors in its sole discretion if the Board of Directors determines that ownership or a Transfer or other event may violate the restrictions described above. Furthermore, if the ownership restriction provided in (iv) above would be violated or upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be void ab initio. All capitalized terms in this legend have the meanings defined in the Second Amended and Restated Certificate of Incorporation of the Corporation, as the same may be amended from time to time, a copy of which, including the restrictions on transfer and ownership, will be furnished to each holder of Capital Stock of the Corporation on request and without charge. Requests for such a copy may be directed to the Secretary of the Corporation at its principal office.

Instead of the foregoing legend, the certificate or written statement of information in lieu of a certificate may state that the Corporation will furnish a full statement about certain restrictions on transferability to a stockholder on request and without charge.

(c) Transfer of Capital Stock in Trust.

(i) Ownership in Trust. Upon any purported Transfer or other event described in clause (b)(i)(B) of this ARTICLE SIXTH that would result in a transfer of shares of Capital Stock to a Trust, such shares of Capital Stock shall be deemed to have been transferred to the Trustee as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Trust pursuant to clause (b)(i)(B) of this ARTICLE SIXTH. The Trustee shall be appointed by the Corporation and shall be a Person unaffiliated with the Corporation and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Corporation as provided in clause (c)(vi) of this ARTICLE SIXTH.

(ii) Status of Shares Held by the Trustee. Shares of Capital Stock held by the Trustee shall be issued and outstanding shares of Capital Stock of the Corporation. The Prohibited Owner shall have no rights in the shares held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Trust.

(iii) Dividend and Voting Rights. The Trustee shall have all voting rights and rights to dividends or other distributions with respect to shares of Capital Stock held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Corporation that the shares of Capital Stock have been transferred to the Trustee shall be paid by the recipient of such dividend or distribution to the Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Trustee. Any dividend or distribution so paid to the Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with

respect to shares held in the Trust and, subject to Delaware law, effective as of the date that the shares of Capital Stock have been transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (A) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Corporation that the shares of Capital Stock have been transferred to the Trustee and (B) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this ARTICLE SIXTH, until the Corporation has received notification that shares of Capital Stock have been transferred into a Trust, the Corporation shall be entitled to rely on its share transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

(iv) *Sale of Shares by Trustee.* Within 20 days of receiving notice from the Corporation that shares of Capital Stock have been transferred to the Trust, the Trustee of the Trust shall sell the shares held in the Trust to a person, designated by the Trustee, whose ownership of the shares will not violate the ownership limitations set forth in clause (b)(i)(A) of this ARTICLE SIXTH. Upon such sale, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this clause (c)(iv). The Prohibited Owner shall receive the lesser of (A) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Trust (*e.g.*, in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Trust and (B) the price per share received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares held in the Trust. The Trustee may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Trustee pursuant to clause (c)(iii) of this ARTICLE SIXTH. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Corporation that shares of Capital Stock have been transferred to the Trustee, such shares are sold by a Prohibited Owner, then (A) such shares shall be deemed to have been sold on behalf of the Trust and (B) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this clause (c)(iv), such excess shall be paid to the Trustee upon demand.

(v) *Purchase Right in Stock Transferred to the Trustee.* Shares of Capital Stock transferred to the Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (A) the price per share in the transaction that resulted in such transfer to the Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (B) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions which has been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Trustee pursuant to clause (c)(iii). The Corporation may pay the amount of such reduction to the Trustee for the benefit of the Charitable Beneficiary. The Corporation shall have the right to accept such offer until the Trustee has sold the shares held in the Trust pursuant to clause (c)(iv) of this ARTICLE SIXTH. Upon such a sale to the Corporation, the interest of the Charitable

Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner.

(vi) *Designation of Charitable Beneficiaries.* By written notice to the Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that the shares of Capital Stock held in the Trust would not violate the restrictions set forth in clause (b)(i)(A) of this ARTICLE SIXTH in the hands of such Charitable Beneficiary.

(d) *NYSE Amex Transactions.* Nothing in this ARTICLE SIXTH shall preclude the settlement of any transaction entered into through the facilities of the NYSE Amex or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this ARTICLE SIXTH and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this ARTICLE SIXTH.

(e) *Enforcement.* The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this ARTICLE SIXTH.

(f) *Non-Waiver.* No delay or failure on the part of the Corporation or the Board of Directors in exercising any right hereunder shall operate as a waiver of any right of the Corporation or the Board of Directors, as the case may be, except to the extent specifically waived in writing.”

7. The Second Amended and Restated Certificate of Incorporation is hereby amended by deleting the first five sentences of ARTICLE Seventh thereof.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF, NRDC Acquisition Corp. has caused this Certificate of Amendment to be signed by _____, its Chief Executive Officer, on the ___ day of October, 2009.

[Name], Chief Executive Officer
