

THIRD AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
LIVING PROOF, INC.

**(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the state of Delaware)**

Living Proof, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

1. This Corporation was originally incorporated under the name Andora, Inc. and its original Certificate of Incorporation was filed with the Secretary of State of Delaware on May 24, 2005.

2. This Third Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

3. The Second Amended and Restated Certificate of Incorporation of this Corporation, as previously amended, is hereby further amended and restated to read in full as follows:

FIRST: The name of the Corporation is Living Proof, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

FOURTH: The number of authorized shares of each class or series of stock of the Corporation, and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, shall be as follows:

Section 1. CAPITAL STOCK

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 190,033,724 consisting of 116,000,000 shares of common stock, \$0.001 par value per share (the "Common Stock"), and 74,033,724 shares of preferred stock, \$0.001 par value per share (the "Preferred Stock").

## Section 2. COMMON STOCK

2.1. Voting Rights. The holders of shares of Common Stock shall be entitled to one vote for each share so held with respect to all matters voted on by the stockholders of the Corporation, subject in all cases to Sections 3.5 and 3.6 of this Article Fourth. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

2.2. Dividends. Subject to the provisions of law and this Certificate of Incorporation and the prior and superior right of the Series C Preferred to the Series C Accruing Dividends and the Series B Preferred to the Series B Accruing Dividends as provided in Section 3.5 hereof, dividends may be paid on the Common Stock as and when declared by the Board of Directors out of funds legally available therefor; provided, however, that no cash dividends may be declared or paid on the Common Stock unless dividends shall also be declared and paid with respect to the Preferred Stock, as provided in Section 3.5 of this Article Fourth.

## Section 3. PREFERRED STOCK

3.1. Designation. 714,286 shares of the Preferred Stock which the Corporation has the authority to issue are hereby designated and shall be known as the "Series A Convertible Preferred Stock" (the "Series A Preferred"), 1,899,351 shares of the Preferred Stock which the Corporation has the authority to issue are hereby designated and shall be known as the "Series A-1 Convertible Preferred Stock" (the "Series A-1 Preferred"), 5,333,333 shares of the Preferred Stock which the Corporation has the authority to issue are hereby designated and shall be known as the "Series A-2 Convertible Preferred Stock" (the "Series A-2 Preferred"), 9,333,333 shares of the Preferred Stock which the Corporation has the authority to issue are hereby designated and shall be known as the "Series A-3 Convertible Preferred Stock" (the "Series A-3 Preferred"), 12,120,000 shares of the Preferred Stock which the Corporation has the authority to issue are hereby designated and shall be known as the "Series A-4 Convertible Preferred Stock" (the "Series A-4 Preferred"), 24,513,949 shares of the Preferred Stock which the Corporation has the authority to issue are hereby designated and shall be known as the "Series B Convertible Preferred Stock" (the "Series B Preferred"), and 20,119,472 shares of the Preferred Stock which the Corporation has the authority to issue are hereby designated and shall be known as the "Series C Convertible Preferred Stock" (the "Series C Preferred"). The Series A Preferred, Series A-1 Preferred, Series A-2 Preferred, Series A-3 Preferred and Series A-4 Preferred are sometimes referred to collectively as the "Initial Preferred."

3.2. Liquidation Rights.

(a) Payments to Holders of Series C Preferred. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Series C Preferred then

outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series B Preferred, Initial Preferred or Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) \$1.7744 (as adjusted for stock dividends, combinations, recapitalizations or other similar events affecting the Series C Preferred), plus an amount equal to the Series C Accruing Dividends (as hereinafter defined) accrued but unpaid thereon (whether or not declared), together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series C Preferred been converted into Common Stock pursuant to Section 3.3 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence is hereinafter referred to as the "Series C Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series C Preferred the full amount to which they shall be entitled under this Section 3.2(a), the holders of shares of Series C Preferred shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Payments to Holders of Series B Preferred. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), after payment in full has been made to the holders of the Series C Preferred of the full amounts to which they shall be entitled as provided in Section 3.2(a), the holders of shares of Series B Preferred then outstanding shall be entitled to be paid out of the remaining assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Initial Preferred or Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) \$1.1830 (as adjusted for stock dividends, combinations, recapitalizations or other similar events affecting the Series B Preferred), plus an amount equal to the Series B Accruing Dividends (as hereinafter defined) accrued but unpaid thereon (whether or not declared), together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series B Preferred been converted into Common Stock pursuant to Section 3.3 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence is hereinafter referred to as the "Series B Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series B Preferred the full amount to which they shall be entitled under this Section 3.2(b), the holders of shares of Series B Preferred shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(c) Payments to Holders of Initial Preferred. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after payment in full has been made to the holders of the Series C Preferred and Series B Preferred of the full amounts to which they shall be entitled as provided in Section 3.2(a) and Section 3.2(b), respectively, the holders of shares of Initial Preferred then outstanding shall be entitled to be paid out of the remaining assets of the Corporation available for

distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, on a *pari passu* basis among the Initial Preferred, an amount per share equal to the greater of (i) \$1.68 in the case of the Series A Preferred (as adjusted for stock dividends, combinations, recapitalizations or other similar events affecting the Series A Preferred), \$1.848 in the case of the Series A-1 Preferred (as adjusted for stock dividends, combinations, recapitalizations or other similar events affecting the Series A-1 Preferred), and \$0.75 in the case of each of the Series A-2 Preferred, Series A-3 Preferred and Series A-4 Preferred (as adjusted for stock dividends, combinations, recapitalizations or other similar events affecting the Series A-2 Preferred, Series A-3 Preferred, or Series A-4 Preferred, as applicable) plus, in each case, an amount equal to any declared but unpaid dividends with respect to such share, or (ii) such amount per share as would have been payable had all shares of the particular series of Initial Preferred been converted into Common Stock pursuant to Section 3.3 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence as it relates to each series of Initial Preferred is hereinafter referred to as the “Initial Preferred Liquidation Amount”). If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Initial Preferred the full amount to which they shall be entitled under this Section 3.2(c), the holders of shares of Initial Preferred Stock shall share ratably in any distribution of the assets available for distribution to the Initial Preferred in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(d) Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock of the full amounts to which they shall be entitled as provided in Section 3.2(a), Section 3.2(b) and Section 3.2(c), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

(e) Deemed Liquidation Events. The following events shall be deemed to be a liquidation of the Corporation for purposes of this Section 3.2, unless the holders of at least a majority in voting power of the Preferred Stock, which such majority must include the holders of a majority of the then outstanding shares of Series C Preferred, elect otherwise by written notice given to the Corporation at least 10 days prior to the effective date of any such event, in which case Section 3.3(d)(vii) shall apply (any such event, unless such an election is made, a “Deemed Liquidation Event”):

(i) a merger or consolidation in which

(A) the Corporation is a constituent party; or

(B) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock which represent, immediately following such merger or consolidation, a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(ii) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(f) Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 3.2(e)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “Additional Consideration”), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the “Initial Consideration”) shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3.2(a), (b), (c) and (d) as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3.2(a), (b), (c) and (d) after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 3.2(f), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3.3. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price of such series of Preferred Stock by the applicable Conversion Price (as defined below) in effect at the time of conversion. The “Original Issue Price” of (i) the Series A Preferred shall be equal to \$1.68, (ii) the Series A-1 Preferred shall be equal to \$1.848, (iii) the Series A-2 Preferred shall be equal to \$0.75, (iv) the Series A-3 Preferred shall be equal to \$0.75, (v) the Series A-4 Preferred shall be equal to \$0.75, (vi) the Series B Preferred shall be equal to \$1.1830 and (vii) the Series C Preferred shall be equal to \$1.7744 (in each case, as adjusted for any stock splits, stock dividends, combinations or subdivisions with respect to such series of Preferred Stock occurring after the Filing Date (as defined below)). The initial “Conversion Price” of (A) the Series A Preferred shall be \$0.56, (B) the Series A-1 Preferred shall be \$0.616, (C) the Series A-2

Preferred shall be \$0.75, (D) the Series A-3 Preferred shall be \$0.75, (E) the Series A-4 Preferred shall be \$0.75, (F) the Series B Preferred shall be \$1.1830, and (G) the Series C Preferred shall be \$1.7744. Such initial Conversion Prices, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price for such share of Preferred Stock upon:

(i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of the Company's Common Stock to the public, for the account of the Company, at a public offering price of at least \$3.00 per share, with such amount to be appropriately adjusted to take account of any stock split, stock dividend, subdivision, combination of shares, or the like, and having an aggregate offering price to the public of not less than \$50,000,000 and after which the Common Stock is listed on the New York Stock Exchange or the Nasdaq Global Market (a "QPO"); or

(ii) the written consent of the holders of at least a majority in voting power of the Preferred Stock outstanding at that time.

Notwithstanding the foregoing, the Series C Preferred as a series may not be automatically converted under this Section 3.3(b) without the vote or written consent of the holders of a majority of the then outstanding Series C Preferred. The person(s) entitled to receive Common Stock issuable upon a conversion of shares of Preferred Stock hereunder shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such offering or the receipt by the Corporation of such consent (or, if later, the effective date for conversion specified in such written consent). Each person who holds of record shares of Preferred Stock immediately prior to an automatic conversion shall be entitled to all declared but unpaid dividends up to the time of the automatic conversion. Such dividends shall be paid to all such holders within thirty (30) days of the automatic conversion.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of shares of Preferred Stock. In lieu of any fractional shares to which a holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective applicable Conversion Price. Before any holder of shares of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein his name or the name or names of his nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued, together with the applicable federal taxpayer identification number. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of shares of Preferred Stock, or to his nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled, together with cash in lieu of any fraction of a share. Subject to Section 3.3(b) above, such conversion shall be deemed to have been made immediately prior to the close of

business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of Section 3.3(d), the following definitions shall apply:

(1) “Option” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) “Filing Date” shall mean the date on which this Third Amended and Restated Certificate of Incorporation was filed and accepted by the Secretary of State of the State of Delaware.

(3) “Convertible Securities” shall mean any evidences of indebtedness, shares (other than Common Stock or other stock issued on conversion of Preferred Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(4) “Additional Shares of Common Stock” shall mean all shares of Common Stock issued (or, pursuant to Section 3.3(d)(iii), deemed to be issued) by the Corporation after the Filing Date, other than shares of Common Stock issued or issuable (collectively, “Exempted Securities”):

(A) pursuant to the Series C Convertible Preferred Stock Purchase Agreement, dated on or about the Filing Date, among the Corporation and the initial purchasers of the Series C Preferred;

(B) shares of Common Stock or Preferred Stock issuable upon the exercise of Options outstanding on the Filing Date;

(C) upon conversion of shares of Preferred Stock or, as it relates to each series of Preferred Stock, by way of dividend or distribution on shares of such series of Preferred Stock;

(D) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 3.3(d)(iii), (vi) and (vii) below;

(E) to officers, directors or employees of, or consultants to, the Corporation pursuant to action by the Board of Directors pursuant to any stock purchase or option plan or other employee or director stock incentive or compensation program approved by a majority of the members of the Board of Directors, including at least one of the Preferred Directors;

(F) in connection with capital leases, bank financing or other similar transactions with a non-equity financing purpose approved by a majority of the members of the Board of Directors, including at least one of the Preferred Directors;

(G) in connection with licensing or strategic alliance transactions approved by a majority of the members of the Board of Directors, including at least one of the Preferred Directors; and

(H) pursuant to the acquisition of another corporation or other entity by the Corporation by merger, purchase of substantially all of the assets, or other reorganization whereby the Corporation acquires not less than 51% of the voting power of such corporation or other entity in a transaction approved by a majority of the members of the Board of Directors, including at least one of the Preferred Directors.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which a particular series of Preferred Stock is convertible shall be made by adjustment in the Conversion Price of such series of Preferred Stock in respect of the issuance of Additional Shares of Common Stock or otherwise, unless the consideration per share for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price of such series of Preferred Stock in effect on the date of, and immediately prior to, the issue of such Additional Shares of Common Stock. In addition, no adjustment in the Series A Conversion Price, Series A-1 Conversion Price, Series A-2 Conversion Price, Series A-3 Conversion Price, Series A-4 Conversion Price, Series B Conversion Price or Series C Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of (a) the Series A Preferred Stock, with respect to the Series A Conversion Price, (b) the Series A-1 Preferred Stock, with respect to the Series A-1 Conversion Price, (c) the Series A-2 Preferred Stock, with respect to the Series A-2 Conversion Price, (d) the Series A-3 Preferred Stock, with respect to the Series A-3 Conversion Price, (e) the Series A-4 Preferred Stock, with respect to the Series A-4 Conversion Price, (f) the Series B Preferred Stock, with respect to the Series B Conversion Price or (g) the Series C Preferred Stock, with respect to the Series C Conversion Price, in each case, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) Issue of Securities, Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided* that Additional Shares of



Common Stock shall not be deemed to have been issued if such shares of Common Stock are excluded from the definition of Additional Shares of Common Stock set forth in Section 3.3(d)(i)(4); and *provided*, however, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

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

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(i) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 3.3(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price of either series of Preferred Stock to an amount which exceeds the lower of (i) the Conversion Price of such series of Preferred Stock on the original

adjustment date, or (ii) the Conversion Price of such series of Preferred Stock that would have resulted from any other issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(E) in the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price of either series of Preferred Stock shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price of either series of Preferred Stock which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price of such series of Preferred Stock shall be adjusted pursuant to this Section 3.3(d)(iii) as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Filing Date shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall not be deemed to have been issued, but the Conversion Price of each series of Preferred Stock shall be adjusted in accordance with Section 3.3(d)(vi).

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3.3(d)(iii)) without consideration or for a consideration per share less than the Conversion Price of a particular series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue in order to increase the number of shares of Common Stock into which such series of Preferred Stock is convertible, to a price (calculated to the nearest cent) determined by dividing (A) (i) such Conversion Price multiplied by the number of shares of Common Stock outstanding immediately prior to such issue (including shares of Common Stock issuable upon conversion of any outstanding Options, Convertible Securities and shares of Preferred Stock), plus (ii) the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued, by (B) (i) the number of shares of Common Stock outstanding immediately prior to such issue (including shares of Common Stock issuable upon conversion of any outstanding Options, Convertible Securities and shares of Preferred Stock), plus (ii) the total number of such Additional Shares of Common Stock so issued, provided that such Conversion Price shall not be so reduced at such time if the amount of such reduction would be an amount less than \$0.01, but any such amount shall be carried forward and any reduction with respect thereto shall be made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$0.01 or more.

(v) Determination of Consideration. For purposes of this Section 3.3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The aggregate consideration received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3.3(d)(iii)(1), relating to Options and Convertible Securities, shall be determined by computing the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration until such subsequent adjustment occurs) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities. The total number of Additional Shares of Common Stock so issued shall be determined by calculating the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number until such subsequent adjustment occurs) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Dividends, Distributions, Subdivisions Combinations or Consolidation of Common Stock.

(1) Stock Dividends, Distributions or Subdivisions. In the event the Corporation at any time, or from time to time, shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock, or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), the Conversion Price of each series of Preferred Stock in effect immediately prior to such stock dividend, stock distribution or subdivision shall, concurrently with the effectiveness of such stock dividend, stock distribution or subdivision, be proportionately decreased.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(vii) Adjustment for Merger or Other Events. Other than as provided in Section 3.2(e), in case of any reorganization, recapitalization, reclassification, consolidation or merger of the Corporation in which the Common Stock is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of each series of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of Common Stock of the Corporation deliverable upon conversion of such share of Preferred Stock would have been entitled upon such reorganization, recapitalization, reclassification, consolidation or merger. In any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of these provisions set forth with respect to the rights and interest thereafter of the holders of Preferred Stock, to the end that these provisions (including provisions with respect to changes in and other adjustments of the Conversion Prices) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of Preferred Stock.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 3.3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with these terms and furnish to each holder of Preferred Stock a certificate setting forth such adjustment, readjustment or conversion and showing in detail the facts upon which such adjustment, readjustment or conversion is based, *provided* that the failure to promptly provide such notice shall not affect the effectiveness of such adjustment, readjustment or conversion. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) each Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of each series of Preferred Stock.

(f) Notices of Record Date. In the event of (i) any taking by the Corporation of a record date of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend which is the same as cash dividends paid in previous quarters) or other distribution, or (ii) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation, and any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall, unless waived by the holders of at least two-thirds in voting power of outstanding shares of Preferred Stock and the holders of a majority of the outstanding shares of Series C Preferred, mail to each holder of Preferred Stock at least 30 days prior to the record date

specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up.

(g) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Preferred Stock.

### 3.4. Voting Rights.

(a) General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of each series of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of such series of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Section 3.4(b) or Section 3.6 or as provided elsewhere in this Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) Election of Directors. The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation and, so long as at least 14,500,000 shares of Preferred Stock remain outstanding (appropriately adjusted to take account of any stock split, stock dividend, subdivision, combination of shares, or the like), the holders of record of the shares of Preferred Stock, exclusively and as a single class, shall be entitled to elect two (2) directors of the Corporation (the "Preferred Directors"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3.4(b).

### 3.5. Dividend Right.

(a) Subject to the provisions of law and this Third Amended and Restated Certificate of Incorporation and subject (and in addition to) to the prior and superior rights of the Series C Preferred to the Series C Accruing Dividends and the Series B Preferred to the Series B Accruing Dividends, the holders of outstanding shares of each series of Preferred Stock shall be entitled to receive a dividend (determined on the basis of the number of shares of Common Stock into which a share of such series of Preferred Stock is then convertible) equal to any dividend paid on Common Stock, other than dividends comprised solely of shares of Common Stock. Any declared and unpaid dividend shall be payable simultaneous with the dividend paid on Common Stock and otherwise on liquidation in accordance with Sections 3.2 (Liquidation). With the exception of the Series C Accruing Dividends and the Series B Accruing Dividends, no dividend shall be declared on any series of Preferred Stock unless an equivalent dividend (determined on the basis of the number of shares of Common Stock into which a share of such series of Preferred Stock is then convertible) is paid on all other series of Preferred Stock.

(b) From and after the date of the issuance of any shares of Series C Preferred, in addition to any dividend payable on the Series C Preferred as set forth in Section 3.5(a), dividends at the rate per annum of 8% of the Series C Original Issue Price, compounded annually, shall accrue on such shares of Series C Preferred (the "Series C Accruing Dividends"). Series C Accruing Dividends shall be cumulative and accrue from day to day, whether or not declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends, prior and in preference to any declaration or payment of any dividend to the holders of shares of Series B Preferred, Initial Preferred or Common Stock; provided however, that except as set forth in Sections 3.2 (Liquidation) and 3.7 (Redemption) or as otherwise provided herein, the Corporation shall be under no obligation to pay such Series C Accruing Dividends.

(c) From and after the date of the issuance of any shares of Series B Preferred, in addition to any dividend payable on the Series B Preferred as set forth in Section 3.5(a), dividends at the rate per annum of 8% of the Series B Original Issue Price shall accrue on such shares of Series B Preferred (the "Series B Accruing Dividends"). Series B Accruing Dividends shall be cumulative and accrue from day to day, whether or not declared, and whether or not there are earnings or profits, surplus or other funds or assets of the Corporation legally available for the payment of dividends, prior and in preference to any declaration or payment of any dividend to the holders of shares of Initial Preferred or Common Stock ; provided however, that except as set forth in Section 3.2 (Liquidation) or as otherwise provided herein, the Corporation shall be under no obligation to pay such Series B Accruing Dividends.

3.6. Covenants/Protective Provisions.

(a) In addition to any other vote required by law or this Certificate of Incorporation, so long as any shares of Preferred Stock shall be outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of at least a majority in voting power of such outstanding shares of Preferred Stock:

(i) amend or repeal any provision of the Corporation's Certificate of Incorporation or By-Laws;

(ii) create, or authorize the creation of, or issue or obligate itself to issue shares of, any class or series of stock on parity with or having preference over any of the series of Preferred Stock;

(iii) except for the redemption of the Series C Preferred pursuant to Section 3.7, create indebtedness for borrowed money, in a single or related series of transactions, in an amount in excess of \$500,000;

(iv) create a new plan or arrangement for the grant of stock options or the issuance of restricted stock or increase the number of shares available under any such plan or arrangement;

(v) increase or decrease the number of directors constituting the Corporation's whole board of directors; or

(vi) pay or declare any dividend or distribution on any shares of the Corporation's capital stock (except the Series C Accruing Dividends, the Series B Accruing Dividends and dividends payable solely in shares of common stock), or apply any of the Corporation's assets to the redemption or repurchase of the Corporation's capital stock (except for the repurchase of securities from employees or consultants of the Corporation pursuant to restricted stock arrangements with individuals who have terminated their relationship with the Corporation and redemptions of the Series C Preferred pursuant to Section 3.7 of this Certificate of Incorporation), unless approved by the board of directors, including at least one director elected by the holders of the Preferred Stock.

(b) In addition to any other vote required by law or this Certificate of Incorporation, so long as any shares of Series B Preferred shall be outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of at least two-thirds (2/3) in voting power of such outstanding shares of Series B Preferred:

(i) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series B Preferred in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation or, the payment of dividends, if such reclassification, alteration or amendment would render such other security senior to the Series B Preferred in respect of any such right, preference or privilege, or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series B Preferred in respect of the

distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series B Preferred in respect of any such right, preference or privilege; or

(ii) alter or change the powers, preferences, or special rights of the shares of Series B Preferred (whether by amendment of the Certificate of Incorporation or By-Laws of the Corporation or by reclassification, merger, consolidation, reorganization or otherwise) so as to affect the powers, preferences, or special rights of the Series B Preferred in an adverse manner that is not the same as or similar in all material respects to the way in which the powers, preferences and special rights of the other series of Preferred Stock are affected. Without limiting or expanding the foregoing, this Section 3.6(b) shall not apply to or restrict the creation, or authorization to create, or the issuance or obligation to issue, shares of any class or series of stock on parity with or having preference over the Series B Preferred as to redemption, dividends, liquidation or otherwise.

(c) In addition to any other vote required by law or this Certificate of Incorporation, so long as any shares of Series C Preferred shall be outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of at least a majority in voting power of such outstanding shares of Series C Preferred:

(i) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series C Preferred in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation or, the payment of dividends, if such reclassification, alteration or amendment would render such other security senior to the Series C Preferred in respect of any such right, preference or privilege, or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series C Preferred in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series C Preferred in respect of any such right, preference or privilege;

(ii) alter or change the powers, preferences, or special rights of the shares of Series C Preferred (whether by amendment of the Certificate of Incorporation or By-Laws of the Corporation or by reclassification, merger, consolidation, reorganization or otherwise);

(iii) pay or declare any dividend or distribution on any shares of the Corporation's capital stock (except the Series C Accruing Dividends, the Series B Accruing Dividends and dividends payable solely in shares of common stock), or apply any of the Corporation's assets to the redemption or repurchase of the Corporation's capital stock (except for the repurchase of securities from employees or consultants of the Corporation pursuant to restricted stock arrangements with individuals who have terminated their relationship with the Corporation); or

(iv) effect any merger or consolidation other than a Deemed Liquidation Event if such merger or consolidation would eliminate or reduce the issued and



outstanding shares of Series C Preferred or otherwise adversely affect the issued and outstanding shares of Series C Preferred Stock through an amendment to the charter or otherwise.

### 3.7 Redemption.

(a) General. Unless prohibited by Delaware law governing distributions to stockholders, shares of Series C Preferred shall be redeemed by the Corporation at a price equal to Series C Liquidation Amount (the “Redemption Price”), in three annual installments commencing not more than 60 days after receipt by the Corporation at any time on or after the fifth (5<sup>th</sup>) anniversary of the Filing Date, from the holders of at least a majority of the then outstanding shares of Series C Preferred, of written notice requesting redemption of all shares of Series C Preferred (the “Redemption Request”). Upon receipt of a Redemption Request, the Corporation shall apply all of its assets to any such redemption, and to no other corporate purpose, except to the extent prohibited by Delaware law governing distributions to stockholders. The Company will use commercially reasonable efforts to obtain funds necessary to effect redemption on the Redemption Dates. The date of each such installment shall be referred to as a “Redemption Date”. On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series C Preferred owned by each holder, that number of outstanding shares of Series C Preferred determined by dividing (i) the total number of shares of Series C Preferred outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies); provided, however, that Excluded Shares (as such term is defined in Subsection 3.7(b)) shall not be redeemed and shall be excluded from the calculations set forth in this sentence. If on any Redemption Date Delaware law governing distributions to stockholders prevents the Corporation from redeeming all shares of Series C Preferred to be redeemed, the Corporation shall ratably redeem the maximum number of shares that it may redeem consistent with such law, and shall redeem the remaining shares as soon as it may lawfully do so under such law.

(b) Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the “Redemption Notice”) to each holder of record of Series C Preferred not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

(i) the number of shares of Series C Preferred held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(ii) the Redemption Date and the Redemption Price;

(iii) the date upon which the holder’s right to convert such shares terminates; and

(iv) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series C Preferred to be redeemed.

If the Corporation receives, on or prior to the 20th day after the date of delivery of the Redemption Notice to a holder of Series C Preferred, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 3.7, then the shares of Series C Preferred registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "Excluded Shares." Excluded Shares shall not be redeemed or redeemable pursuant to this Section 3.7, whether on such Redemption Date or thereafter.

(c) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series C Preferred to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 3.3, shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series C Preferred represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series C Preferred shall promptly be issued to such holder.

(d) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series C Preferred to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series C Preferred so called for redemption shall not have been surrendered, dividends with respect to such shares of Series C Preferred shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

3.8. Converted or Otherwise Acquired Shares. Any share of Preferred Stock that is converted under Section 3.3 or redeemed under Section 3.7 or otherwise acquired by the Corporation will be canceled and will not be reissued, sold or transferred.

3.9. Residual Rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary shall be vested in the Common Stock.

FIFTH: In furtherance of and not in limitation of powers conferred by statute, it is further provided that:

(b) Subject to the limitations and exceptions, if any, contained in the Certificate of Incorporation or the Bylaws of the Corporation, the Bylaws may be adopted, amended or repealed by the Board of Directors of the Corporation, including at least one of the Preferred Directors;

(c) Elections of directors need not be by written ballot unless, and only to the extent, otherwise provided in the Bylaws of the Corporation;

(d) Subject to any applicable requirements of law, the books of the Corporation may be kept outside the State of Delaware at such locations as may be designated by the Board of Directors or in the Bylaws of the Corporation; and

(e) Subject to the limitations and exceptions, if any, contained in the Bylaws of the Corporation, meetings of stockholders maybe held within or without the State of Delaware.

SIXTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which DGCL permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL.

Any repeal or modification of the foregoing provisions of this Article SIXTH shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

SEVENTH: No director of the Corporation shall be personally liable to the Corporation or to any of its stockholders for monetary damages arising out of such director's breach of fiduciary duty as a director of the Corporation, except to the extent that the elimination or limitation of such liability is not permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended. No amendment to or repeal of the provisions of this Article SEVENTH shall deprive any director of the Corporation of the benefit hereof with respect to any act or failure to act of such director occurring prior to such amendment or repeal.

EIGHTH: Subject to the term herein and any additional votes required by this Certificate of Incorporation, the Corporation 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 the General Corporation Law of the State of Delaware and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

*[signature page follows]*

IN WITNESS WHEREOF, the Corporation has caused this Third Amended and Restated Certificate of Incorporation to be signed by Jill Beraud, its Chief Executive Officer, this 13<sup>th</sup> day of February, 2013.

LIVING PROOF, INC.

By: /s/ Jill Beraud  
Jill Beraud  
Chief Executive Officer