

**TENTH  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ALLCONNECT, INC.**

Allconnect, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

FIRST: The name of the corporation is Allconnect, Inc. The original Certificate of Incorporation of Allconnect, Inc. was filed with the office of the Secretary of State of the State of Delaware on December 29, 1999 under the name Allconnect, Inc. Allconnect, Inc. filed a Certificate of Amendment of Certificate of Incorporation of Allconnect, Inc. with the office of the Secretary of State of the State of Delaware on February 14, 2000. Allconnect, Inc. filed (i) a Certificate of Designation, Preferences and Rights of the Series A Preferred Stock of Allconnect, Inc. with the office of the Secretary of State of the State of Delaware on February 14, 2000, (ii) a Certificate of Amendment of Certificate of Incorporation for Allconnect, Inc. with the office of the Secretary of State of the State of Delaware on May 26, 2000, (iii) a Certificate of Correction to the Certificate of Amendment with the office of the Secretary of State of the State of Delaware on May 30, 2000, (iv) a Certificate of Designation, Preferences and Relative, Participating, Optional and Other Special Rights of Series B Convertible Participating Preferred Stock and Qualifications, Limitations and Restrictions Thereof with the office of the Secretary of State of the State of Delaware on June 8, 2000 (the "*Series B Certificate of Designation*"), (v) a Certificate of Correction to the Series B Certificate of Designation with the office of the Secretary of State of the State of Delaware on September 20, 2000, (vi) a Certificate of Designation, Preferences and Relative, Participating, Optional and Other Special Rights of Series C Convertible Participating Preferred Stock and Qualifications, Limitations and Restrictions Thereof with the office of the Secretary of State of the State of Delaware on December 28, 2000, (vii) a Certificate of Amendment of Certificate of Incorporation for Allconnect, Inc. with the office of the Secretary of State of the State of Delaware on December 28, 2000 and (viii) a Certificate of Amendment to the Series B Certificate of Designation with the office of the Secretary of State of the State of Delaware on December 28, 2000. Allconnect, Inc. also filed (i) an Amended and Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware on June 1, 2001, (ii) an Amendment to the Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on November 14, 2001, and (iii) a Second Amendment to the Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on May 31, 2002. Allconnect, Inc. also filed a Second Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on September 26, 2002, a Third Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on March 27, 2003, a Fourth Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on January 12, 2004, a First Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on March 24, 2004, a Fifth Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on March 25,

2004, a Sixth Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on June 1, 2004, a Seventh Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on April 22, 2005, an Eighth Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on April 29, 2005, a Certificate of Amendment to the Eighth Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on July 19, 2005 and a Ninth Amended and Restated Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware on February 16, 2006.

SECOND: This Tenth Amended and Restated Certificate of Incorporation restates and integrates and further amends the Ninth Amended and Restated Certificate of Incorporation of Allconnect, Inc., as amended, and has been duly adopted and approved in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

Approval by Allconnect, Inc.'s Board of Directors (the "**Board**") of this Tenth Amended and Restated Certificate of Incorporation was given by written consent of the members of the Board in accordance with Section 141 of the General Corporation Law of the State of Delaware.

THIRD: Stockholder approval of this Tenth Amended and Restated Certificate of Incorporation was given by written consent of the stockholders of Allconnect, Inc. in accordance with Section 228 of the General Corporation Law of the State of Delaware.

FOURTH: The text of the Ninth Amended and Restated Certificate of Incorporation, as amended, is hereby amended and restated in its entirety as follows:

#### ARTICLE 1 *NAME*

The name of this corporation is Allconnect, Inc. (the "**Corporation**").

#### ARTICLE 2 *REGISTERED OFFICE AND AGENT*

The registered office of the Corporation in the State of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware 19801. The registered agent of the Corporation at such address shall be The Corporation Trust Company.

#### ARTICLE 3 *DURATION*

The Corporation is to have perpetual existence.

## ARTICLE 4 PURPOSE AND POWERS

The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "*Delaware General Corporation Law*"). The Corporation shall have all powers that may now or hereafter be lawful for a corporation to exercise under the Delaware General Corporation Law.

## ARTICLE 5 CAPITAL STOCK

The total number of shares of capital stock of all classes which the Corporation shall have the authority to issue is One Billion One Hundred Seventy One Million Two Hundred Seventy Four Thousand Seventeen (1,171,274,017) shares of which (a) Four Hundred Sixty Seven Million Two Hundred Seventy Four Thousand Seventeen (467,274,017) shares shall be preferred stock, \$0.001 par value per share ("*Preferred Stock*"), of which (i) Five Hundred Thousand (500,000) shares shall be designated as Series A Preferred Stock (the "*Series A Preferred Stock*"); (ii) Nineteen Million One Hundred Forty Thousand One Hundred Seventy-Five (19,140,175) shares shall be designated as Series B Preferred Stock (the "*Series B Preferred Stock*"), (iii) One Hundred Million (100,000,000) shares shall be designated as Series C Preferred Stock (the "*Series C Preferred Stock*"), (iv) Twenty Five Million Three Hundred Thousand (25,300,000) shares shall be designated as Series D Preferred Stock (the "*Series D Preferred Stock*"), (v) Two Hundred Million (200,000,000) shares shall be designated as Series F Preferred Stock (the "*Series F Preferred Stock*"), (vi) One Million Four Hundred Seventy Five Thousand Seven Hundred Ninety Seven (1,475,797) shares shall be designated as Series F-1 Preferred Stock (the "*Series F-1 Preferred Stock*"), (vii) Twenty Two Million Eighty Two Thousand Seven Hundred Fifty Two (22,082,752) shares shall be designated as Series G Preferred Stock (the "*Series G Preferred Stock*"), (viii) Twenty Seven Million Seven Hundred Seventy Seven Thousand Seven Hundred Seventy Eight (27,777,778) shares shall be designated as Series H Preferred Stock (the "*Series H Preferred Stock*"), and (ix) Seventy Million Nine Hundred Ninety Seven Thousand Five Hundred Fifteen (70,997,515) shares shall be designated as Series I Preferred Stock (the "*Series I Preferred Stock*"), and (b) Seven Hundred Four Million (704,000,000) shares shall be common stock, \$0.001 par value per share ("*Common Stock*"). Shares of the Preferred Stock and the Common Stock purchased by the Corporation shall be cancelled and shall revert to authorized but unissued shares of the same type. The Board may decrease (but not increase) the number of shares in any series subsequent to the date of original issuance of shares in such series, but not below the number of shares of such series then outstanding or as required to be reserved.

- (A) **COMMON STOCK.** Each share of Common Stock shall have the same relative rights as and be identical in all respects to all other shares of Common Stock.

1. **DIVIDENDS.** Subject to the prior rights, if any, of holders of all classes of stock at the time outstanding having prior rights as to dividends, dividends may be paid on Common Stock out of any assets legally available for the payment of dividends thereon, but only when, as and if declared by the Board.

2. **DISSOLUTION, LIQUIDATION, OR WINDING UP.** In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Corporation (or other Liquidating Event (as defined below)), the assets of the Corporation shall be distributed as provided in Section (B)2 of this Article 5.

3. **VOTING RIGHTS.** The holders of Common Stock shall be entitled to vote on each matter on which the stockholders of the Corporation shall be entitled to vote under law (including, without limitation, the election of one or more directors in accordance with and subject to this Certificate of Incorporation), and each such holder shall be entitled to one vote for each share of Common Stock held by such holder.

(B) **PREFERRED STOCK.**

1. **DIVIDENDS.**

(a) Subject to Section B(2), holders of the following capital stock of the Corporation are entitled to dividends when, as, and if declared by the Board, in the following order of preference, with the stock described in (i) being the highest priority stock and the stock described in (vii) being the lowest priority capital stock:

- (i) Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, on a *pari passu* basis with respect to each other,
- (ii) Series D Preferred Stock,
- (iii) Series C Preferred Stock,
- (iv) Series B Preferred Stock,
- (v) Series A Preferred Stock,
- (vi) Common Stock, and
- (vii) any other capital stock.

(b) The holders of shares of Preferred Stock (including, but not limited to, the Series F Preferred Stock, the Series F-1 Preferred Stock, the Series G Preferred Stock, the Series H Preferred Stock and the Series I Preferred Stock) shall be entitled to receive dividends, out of any assets legally available therefor, with the holders of shares of Common Stock of the Corporation and, at the rate per share declared by the Board on each outstanding share of Common Stock, when, as and if declared by the Board. Dividends shall not be cumulative. Subject to Section B(2), declared and unpaid dividends on the Preferred Stock shall be payable upon the liquidation, dissolution or winding up of the Corporation to the stockholders of the Corporation in the priority set forth above. No dividend or distribution shall be paid to holders of a lower priority stock unless an equal or greater dividend or distribution is paid to holders of shares of all classes or series of capital stock with a higher priority stock.

(c) In all cases hereunder, dividends shall be calculated and paid on the shares of Preferred Stock on an as-converted-to Common Stock basis.

## 2. LIQUIDATION.

(a) The "***Series A Original Purchase Price***" shall be equal to \$2.00 per share of Series A Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations or the like. The "***Series B Original Purchase Price***" shall be equal to \$0.9200 per share of Series B Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations, or the like. The "***Series C Original Purchase Price***" shall be equal to \$0.2122 per share of Series C Preferred Stock as adjusted for any stock, dividends, combinations, recapitalizations or the like. The "***Series D Original Purchase Price***" shall be equal to \$0.2812 per share of Series D Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations or the like. The "***Series F Original Purchase Price***" shall be equal to \$0.1694 per share of Series F Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations or the like. The "***Series F-1 Original Purchase Price***" shall be equal to \$0.1694 per share of Series F-1 Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations or the like. The "***Series G Original Purchase Price***" shall be equal to \$0.2151 per share of Series G Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations or the like. The "***Series H Original Purchase Price***" shall be equal to \$0.2520 per share of Series H Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations or the like. The "***Series I Original Purchase Price***" shall be equal to \$0.2817 per share of Series I Preferred Stock as adjusted for any stock dividends, combinations, recapitalizations or the like.

(b) **Preference.** In the event of any actual liquidation, dissolution or winding up of the Corporation, or any event deemed to be a liquidation, dissolution or winding up pursuant to Paragraph (c) of this Section (B)2, either voluntary or involuntary (collectively, a "***Liquidating Event***"):

(i) The holders of the Series I Preferred Stock shall be entitled to receive for each share of Series I Preferred Stock held by them, prior and in preference to any distribution of any of the assets of the Corporation to the holders of all other Preferred Stock, Common Stock and any other capital stock of the Company by reason of their ownership thereof, the Series I Original Purchase Price plus an amount equal to all declared and unpaid dividends on such shares, if any. The sum of the Series I Original Purchase Price and such declared and unpaid dividends is hereinafter referred to as the "***Senior Liquidation Preference***." If upon the occurrence of any Liquidating Event the assets of the Corporation are insufficient to pay the full Senior Liquidation Preference on the Series I Preferred Stock, then all of the assets of the Corporation available to pay the Senior Liquidation Preference shall be distributed ratably among the holders of the Series I Preferred Stock in proportion to the full amounts which they would otherwise be respectively entitled.

(ii) After payment in full has been made to the holders of the Series I Preferred Stock of the Senior Liquidation Preference, the holders of the Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock and Series H Preferred Stock, *pari passu* with respect to each other, shall be entitled to receive for each such share of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock and Series H Preferred Stock held by

them, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock, Common Stock and any other capital stock of the Company by reason of their ownership thereof, the Series F Original Purchase Price, the Series F-1 Original Purchase Price, the Series G Original Purchase Price or the Series H Original Purchase Price, as the case may be, plus an amount equal to all declared and unpaid dividends on such shares, if any. The sum of the Series F Original Purchase Price, the Series F-1 Original Purchase Price, the Series G Original Purchase Price, the Series H Original Purchase Price and such declared and unpaid dividends thereon is hereinafter referred to as the "**Second Liquidation Preference.**" If upon the occurrence of any Liquidating Event the assets of the Corporation are insufficient to pay the full Second Liquidation Preference on the Series F Preferred Stock, the Series F-1 Preferred Stock, the Series G Preferred Stock and the Series H Preferred Stock then all of the assets of the Corporation available to pay the Second Liquidation Preference shall be distributed ratably among the holders of the Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock and Series H Preferred Stock in proportion to the full amounts which they would otherwise be respectively entitled.

(iii) After payment in full has been made to the holders of Series I Preferred Stock of the Senior Liquidation Preference and the holders of the Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock and Series H Preferred Stock of the Second Liquidation Preference, the holders of the Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, *pari passu* with respect to each other, shall be entitled to receive for each such share of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock held by them, prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock, Common Stock and any other capital stock by reason of their ownership thereof, the Series B Original Purchase Price, the Series C Original Purchase Price or the Series D Original Purchase Price, as the case may be, plus an amount equal to all declared and unpaid dividends on such shares, if any. The sum of the Series B Original Purchase Price and such declared but unpaid dividends is hereinafter referred to as the "**Series B Liquidation Preference.**" The sum of the Series C Original Purchase Price and such declared but unpaid dividends is hereinafter referred to as the "**Series C Liquidation Preference.**" The sum of the Series D Original Purchase Price and such declared but unpaid dividends is hereinafter referred to as the "**Series D Liquidation Preference.**" The Series A Liquidation Preference (defined below), Series B Liquidation Preference, the Series C Liquidation Preference, the Series D Liquidation Preference, the Second Liquidation Preference and the Senior Liquidation Preference may be referred to collectively as the "**Liquidation Preferences**" or individually as a "**Liquidation Preference.**" If upon the occurrence of any Liquidating Event the assets of the Corporation are insufficient to pay the full Series B Liquidation Preference of the Series B Preferred Stock, the full Series C Liquidation Preference of the Series C Preferred Stock and the full Series D Liquidation Preference of the Series D Preferred Stock, then all of the assets of the Corporation available to pay the Series B Liquidation Preference, the Series C Liquidation Preference and the Series D Liquidation Preference shall be distributed ratably among the holders of the Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, in proportion to the full amounts which they would otherwise be respectively entitled.

(iv) Upon the completion of the full distributions required by Sections (B)2(b)(i), (ii) and (iii) above, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, the Series A Original Purchase Price plus an amount equal to declared and unpaid dividends on such shares, if any. The sum of the Series A Original Purchase Price and such declared but unpaid dividends is hereinafter referred to as the "**Series A Liquidation Preference**." If upon the occurrence of any Liquidating Event and upon the completion of the full distributions required by Sections (B)2(b)(i), (ii) and (iii) above, the assets of the Corporation are insufficient to pay the full Series A Liquidation Preference of the Series A Preferred Stock, then all the assets of the Corporation available to pay the Series A Liquidation Preference shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the number of shares of Series A Preferred Stock held by such holders.

(v) Upon the completion of the full distributions required by Sections (B)2(b)(i), (ii), (iii) and (iv) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed with respect to the outstanding shares of Series I Preferred Stock, Series F Preferred Stock and Common Stock, treating each share of Series I Preferred Stock and Series F Preferred Stock for purposes of this distribution as the number of shares of Common Stock into which each such share of Series I Preferred Stock and Series F Preferred Stock, as the case may be, could then be converted; provided, however, that the amount that the holders of Series I Preferred Stock shall receive pursuant to this Section (B)2(v) shall be limited such that in no event shall the holders of Series I Preferred Stock receive in the aggregate, in excess of two (2) times the Senior Liquidation Preference pursuant to the provisions of Section (B)2(b)(i) above and this Section (B)2(b)(v).

(c) **Deemed Liquidations.** In the event that the Corporation is a party to an Acquisition or Asset Transfer (as hereinafter defined), then each holder of Preferred Stock shall be entitled to receive, for each share of Preferred Stock then held, out of the proceeds of such Acquisition or Asset Transfer available for distribution to the stockholders, the amount of cash, securities or other property to which such holder would be entitled to receive in a Liquidating Event pursuant to Section (b)(i), (ii), (iii), (iv) or (v) above. For the purposes hereof, (i) an "**Acquisition**" shall mean the consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization or similar transaction, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization or similar transaction, shall, immediately thereafter own less than 50% (calculated on an as-converted, fully diluted basis) of the surviving or successor entity's voting or equity securities immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of 50% of the Corporation's voting or equity securities are transferred (excluding any voting or equity securities issued by the Corporation or surviving or successor entity in such consolidation, merger or reorganization or similar transaction or series of transactions for the purpose of raising additional capital or retiring debt), and (ii) an "**Asset Transfer**" shall mean the sale, conveyance, transfer, exclusive license, lease or other disposition of all or substantially all of the assets of the Corporation (an "**Asset Transfer**"). Notwithstanding anything in the foregoing to the contrary, any event that would otherwise be treated as an Acquisition or an Asset Transfer, but for this sentence, shall not be deemed to be an Acquisition or an Asset Transfer, if (x) the holders of a majority of the outstanding shares of

Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, and (y) the holders of a majority of the outstanding shares of Series F Preferred Stock (voting as a separate class), so agree.

(d) **Distributions of Property.** In the event of a Liquidating Event under this Section (B)2, if the consideration received by the Corporation is other than cash, its value will be its fair market value (as determined below). Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by Section (B)2(d)(ii) below:

(A) If traded on a securities exchange or the Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or quotation system over the five day trading period ending three trading days prior to the closing of the transaction;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the five day trading period ending three trading days prior to the closing of the transaction; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board and approved by the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class. If such approval is not obtained within 10 business days after the Board first notifies such holders, in writing, of the valuation proposed by the Board, then, within five business days after the expiration of the preceding 10 business day period, the Board and the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class, shall mutually appoint a nationally recognized accounting firm or reputable valuation firm with experience in the appraisal of the types of assets at issue to appraise the fair market value of the securities. If the Board and the holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class, are unable, within, such five business day period, to agree upon a nationally recognized accounting firm or reputable valuation firm to perform the appraisal, then, within an additional five business days thereafter, each of (i) the Board, and (ii) the holders of a majority of the then outstanding Preferred Stock, shall appoint one accounting firm or reputable valuation firm, and each of those firm(s) shall appoint another accounting firm or reputable valuation firm, which third firm shall perform the appraisal. If the final appraisal is within 10% of the value proposed by the Board, then the cost of such appraisal will be borne proportionally by the holders of the then outstanding shares of Preferred Stock requesting such appraisal, based upon the value of their respective holdings. If the final appraisal varies by more than 10% from the value proposed by the Board, then the Corporation shall bear the cost of the appraisal.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount



from the market value determined as above in Section (B)2(d)(i) to reflect the approximate fair market value thereof, as determined by the Board.

(e) **Spin-offs.** In the event of a spin-off or similar event, the Corporation shall establish a similar capital structure for the newly formed entity as then in effect for the Corporation in order to protect the rights, preferences and privileges of the Preferred Stock.

**3. VOTING RIGHTS.** Except as otherwise expressly provided herein, including but not limited to Article 6, or by law, the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of the Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares of Common Stock into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Notwithstanding anything to the contrary herein, (i) the holders of Common Stock shall not be entitled to vote as a separate class on any amendment to this Tenth Amended and Restated Certificate, as it may be amended or restated from time to time, that increases or decreases the number of authorized shares of Common Stock and (ii) subject to the requirements set forth in Section (B)4 hereof, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock and Preferred Stock, voting together as a single class on an as-converted to Common Stock basis.

#### **4. PROTECTIVE PROVISIONS.**

(a) **Series I Preferred Stockholder Protective Provisions.** So long as any shares of Series I Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series I Preferred Stock, voting separately as a single class:

(i) alter, repeal or change the rights, preferences or privileges of the shares of Series I Preferred Stock (including by means of merger, consolidation, capital reorganization or otherwise); or

(ii) authorize the declaration or payment of a dividend on or the purchase, redemption or other acquisition of any security issued by the Corporation and junior to or *pari passu* with the Series I Preferred Stock (except for (A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at or below cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer, in all cases as approved by the Board or (B) a redemption under Section (B)8 hereof).

(b) **Series H Preferred Stockholder Protective Provisions.** So long as any shares of Series H Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series H Preferred Stock, voting separately as a single class:

(i) alter or change the rights, preferences or privileges of the shares of Series H Preferred Stock so as to affect adversely the shares of Series H Preferred Stock (including by means of merger, consolidation, capital reorganization or otherwise); or

(ii) authorize the declaration or payment of a dividend on or the purchase, redemption or other acquisition of any security issued by the Corporation and junior to or *pari passu* with the Series H Preferred Stock (except for (A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at or below cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer, in all cases as approved by the Board or (B) a redemption under Section (B)8 hereof).

(c) **Series G Preferred Stockholder Protective Provisions.** So long as any shares of Series G Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series G Preferred Stock, voting separately as a single class:

(i) alter or change the rights, preferences or privileges of the shares of Series G Preferred Stock so as to affect adversely the shares of Series G Preferred Stock (including by means of merger, consolidation, capital reorganization or otherwise); or

(ii) authorize the declaration or payment of a dividend on or the purchase, redemption or other acquisition of any security issued by the Corporation and junior to or *pari passu* with the Series G Preferred Stock (except for (A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at or below cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer, in all cases as approved by the Board or (B) a redemption under Section (B)8 hereof).

(d) **Series F-1 Preferred Stockholder Protective Provisions.** So long as any shares of Series F-1 Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series F-1 Preferred Stock, voting separately as a single class, alter or change the rights, preferences or privileges of the shares of Series F-1 Preferred Stock so as to affect adversely the shares of Series F-1 Preferred Stock.

(e) **Series F Preferred Stockholder Protective Provisions.** So long as any shares of Series F Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a

majority of the then outstanding shares of Series F Preferred Stock, voting separately as a single class:

(i) alter, repeal or amend the rights, preferences or privileges of the shares of Series F Preferred Stock (including by means of merger, consolidation, capital reorganization or otherwise);

(ii) authorize the dissolution or winding up of the Corporation;

(iii) authorize the declaration or payment of a dividend on or the purchase, redemption or other acquisition of any security issued by the Corporation and junior to or *pari passu* with the Series F Preferred Stock (except for (A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at or below cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer, in all cases as approved by the Board or (B) a redemption under Section (B)8 hereof); or

(iv) increase or decrease the authorized number of shares of Series F Preferred Stock, except as may be necessary to satisfy the Corporation's obligation to issue shares of Series F Preferred Stock pursuant to the Warrants (as hereinafter defined).

(f) **Series D Preferred Stockholder Protective Provisions.** So long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series D Preferred Stock, voting separately as a single class:

(i) alter or change the rights, preferences or privileges of the shares of Series D Preferred Stock so as to affect adversely the shares of Series D Preferred Stock; or

(ii) authorize the declaration or payment of a dividend on or the purchase, redemption or other acquisition of any security issued by the Corporation and junior to or *pari passu* with the Series D Preferred Stock (except for (A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at or below cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer, in all cases as approved by the Board or (B) a redemption under Section (B)8 hereof).

(g) **Series C Preferred Stockholder Protective Provisions.** So long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series C Preferred Stock, voting separately as a single class:

(i) alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock so as to affect adversely the shares of Series C Preferred Stock; or

(ii) authorize the declaration or payment of a dividend on or the purchase, redemption or other acquisition of any security issued by the Corporation and junior to or *pari passu* with the Series C Preferred Stock (except for (A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at or below cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer, in all cases as approved by the Board or (B) a redemption under Section (B)8 hereof).

(h) **Series B Preferred Stockholder Protective Provisions.** So long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series B Preferred Stock, voting separately as a single class:

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock so as to affect adversely the shares of Series B Preferred Stock; or

(ii) authorize the declaration or payment of a dividend on or the purchase, redemption or other acquisition of any security issued by the Corporation and junior to or *pari passu* with the Series B Preferred Stock (except for (A) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares at or below cost upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer, in all cases as approved by the Board or (B) a redemption under Section (B)8 hereof).

(i) **Series B, Series C, Series D, Series F, Series F-1, Series G, Series H and Series I Preferred Stockholder Protective Provisions.** So long as any shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series I Preferred Stock, Series H Preferred Stock, Series G Preferred Stock, Series F-1 Preferred Stock, Series F Preferred Stock, Series D Preferred Stock, Series C Preferred Stock and Series B Preferred Stock, voting together as a single class on an as converted to Common Stock basis:

(i) authorize or commence any liquidation, dissolution or winding up of the Corporation;

(ii) authorize the issuance of any security by the Corporation with relative rights or preferences on parity with or senior to the Series F Preferred Stock;

(iii) increase (other than by conversion) or decrease the total number of authorized shares of Series I Preferred Stock, Series H Preferred Stock, Series G Preferred Stock, Series F-1 Preferred Stock, Series F Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock, Common Stock or any other

series or class of the Corporation's capital stock, except as may be necessary to satisfy the Corporation's obligation to issue shares of Series F Preferred Stock pursuant to the Warrants;

(iv) authorize or consummate any Acquisition or Asset Transfer or any reclassification or other change of any stock, or any recapitalization of the Corporation (including, but not limited to, a recapitalization in connection with a spin-off of a portion of the Corporation's assets);

(v) increase or decrease the size of the Board;

(vi) amend, alter or repeal the Corporation's Certificate of Incorporation or by-laws so as to affect adversely the shares of Preferred Stock (including by means of merger, consolidation, capital reorganization or otherwise); or

(vii) following the date hereof, borrow funds in excess of \$500,000 in the aggregate.

(j) All protective provisions shall terminate upon the closing of the Corporation's initial public offering registered under the Securities Act of 1933, as amended (the "*1933 Act*") prior to or in connection with which all outstanding shares of Preferred Stock will be automatically converted to Common Stock.

**5. STATUS OF CONVERTED STOCK.** In the event any shares of Preferred Stock shall be converted pursuant to Section (B)7 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

## **6. ISSUANCES OF NEW SECURITIES.**

(a) **Investor Participation in Future Issuances of New Securities.** If the Corporation shall, from time to time after the date hereof, sell and issue New Securities (defined below), then each holder of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock other than any holder who is not a Qualified Transferee (as defined in Section (B)(6)(f) below) (each, an "*Investor*") shall have the right to purchase its Pro-Rata Portion (defined below), of such New Securities; *provided, however,* the Corporation may exclude from such offers any holders who are not "accredited investors" within the meaning of Rule 501 under the 1933 Act, or to whom an offer and sale cannot be lawfully made.

(b) For the purposes of this Section B(6):

(i) an Investor's "*Pro Rata Portion*" shall mean the quotient of (x) the Common Stock or other capital stock (on an as converted to Common Stock basis), including the number of shares of Common Stock or other capital stock issuable upon exercise of any outstanding options and warrants and upon conversion of the Preferred Stock and other convertible securities of Corporation then held by the Investor, divided by (y) the sum of the

total number of then outstanding shares of Common Stock and the total number of shares of Common Stock issuable upon exercise of any outstanding options and warrants and upon conversion of all then-outstanding shares of Preferred Stock and other convertible securities of the Corporation; and

(ii) “*New Securities*” shall mean any options, warrants, convertible debt, shares of capital stock or other securities or rights convertible or exchangeable for capital stock of the Corporation; *provided, however*, that New Securities does not include any of the following issuances:

(A) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock;

(B) Shares of Common Stock issued or issuable in an initial public offering registered under the 1933 Act in connection with which all outstanding shares of Preferred Stock will be automatically converted to Common Stock;

(C) Shares of Common Stock or Common Stock Equivalents issued pursuant to a transaction described in Sections (B)(7)(e)(ii), (iii), (iv) and (v);

(D) Shares of Common Stock of the Corporation issuable or issued to employees, officers, consultants or directors of the Corporation pursuant to the terms of the Corporation’s 2005 Stock Incentive Plan, the Corporation’s 2000 Long Term Incentive Plan, the Corporation’s 2000 Non-Employee Director and Consultant Plan, or any other equity incentive plan or arrangement approved by the Board;

(E) Options, warrants, convertible debt, shares of capital stock or other securities or rights convertible or exchangeable for capital stock of the Corporation issued for consideration other than cash pursuant to a license, merger, consolidation, acquisition or similar business combination approved by the Board;

(F) Options, warrants, convertible debt, shares of capital stock or other securities or rights convertible or exchangeable for capital stock of the Corporation issued in connection with any equipment leases or borrowings, direct or indirect, from financial or other institutions regularly engaged in such business, provided that any such issuance is or has been duly approved by the Board;

(G) Up to 400,071 shares of Series D Preferred Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) pursuant to the warrant issued by the Corporation to RBC Centura Bank in connection with the Loan and Security Agreement dated August 26, 2002 (the “*Loan Agreement*”), or other securities or rights convertible or exchangeable for such Series D Preferred Stock;

(H) Up to 417,650 shares of Series F Preferred Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) pursuant to a warrant issued by the Corporation to RBC Centura Bank in connection with Third Amendment

to the Loan Agreement, or other securities or rights convertible or exchangeable for such Series F Preferred Stock;

(I) Up to 135,827 shares of Series B Preferred Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) pursuant to a warrant issued by the Corporation to Legacy Securities Corp. dated October 13, 2000, or other securities or rights convertible or exchangeable for such shares of Series B Preferred Stock;

(J) Up to 569,870 shares of Common Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) pursuant to a warrant that is to be issued in connection with a Letter Agreement dated January 23, 2001 entered into between the Corporation and Korn/Ferry International;

(K) Up to 7,621,220 shares of Common Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) pursuant to a warrant issued by the Corporation to Escalate Capital I, L.P.;

(L) Up to 126,940,319 shares of Series F Preferred Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) issuable pursuant to the Amended and Restated Exchange Agreement (the "*Exchange Agreement*") by and among the Company and the other parties named therein and dated as of January 12, 2004 and amended and restated as of March 24, 2004, the Series F Preferred Stock Purchase Agreement (the "*Original Purchase Agreement*"), by and among the Company and the other parties named therein dated as of January 12, 2004 and the Amended and Restated Series F Preferred Stock Purchase Agreement (together with the Original Purchase Agreement, referred to as the "*Purchase Agreement*"), by and among the Company and the other parties named therein dated as of January 12, 2004 and amended and restated as of March 24, 2004 (collectively, with the parties to the Exchange Agreement, the "*Original Series F Holders*");

(M) The warrants issued pursuant to the Purchase Agreement as such warrants may be amended from time to time (the "*Warrants*") and all shares of Series F Preferred Stock and Common Stock issued or issuable upon exercise of the Warrants and all shares of Common Stock issued or issuable upon conversion thereon;

(N) Any other securities issued by the Corporation, if: (1) the holders of a majority of the outstanding shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, and (2) the holders of a majority of the outstanding shares of Series F Preferred Stock (voting as a separate class), waive the rights of all holders of Preferred Stock to purchase such New Securities; and

(O) Up to 588,235 shares of Series G Preferred Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) pursuant to a warrant issued by the Corporation to Pentech Financial Services, Inc. and all shares of Common Stock issued or issuable upon conversion thereon.

(c) **Procedure.** If the Corporation proposes to undertake an issuance of New Securities, then it shall promptly give each Investor written notice of its intention (the "**First Notice**"), describing the type of New Securities, the price and the general terms and conditions upon which the Corporation proposes to issue the same. Each Investor shall then have 15 days from the receipt of the First Notice to agree to purchase up to its Pro Rata Portion of New Securities for the price and upon the terms and conditions specified in the First Notice, by giving written notice to the Corporation and stating therein the quantity of New Securities to be purchased. The Corporation shall give each participating Investor which purchases its full Pro Rata Portion ( the "**Participating Investors**") written notice (the "**Subsequent Notice**") on the date immediately following such 15 day period as to any New Securities with respect to which Investors have not exercised their right to purchase their full Pro Rata Portion (the "**Unallocated Securities**"). The Participating Investors shall then have the option to purchase up to that portion of the Unallocated Securities (if any) equal to the ratio of such Participating Investor's Pro Rata Portion divided by the sum of the Pro Rata Portions of all of the Participating Investors, by so notifying the Corporation in writing within 7 days after receipt of the Subsequent Notice.

(d) **Lapse.** During the period commencing on the later of: (i) expiration of the 15 day period following delivery of the First Notice (if no Investor shall have theretofore agreed to purchase its Pro Rata Portion of New Securities), or (ii) the expiration of the 7 day period following delivery of the Subsequent Notice (if at least one Investor shall have agreed to purchase its Pro Rata Portion of New Securities), and ending 90 days thereafter, the Corporation may sell any of the New Securities in respect of which such Investors' rights were not exercised, at a price and upon terms and conditions no more favorable to the purchasers thereof than specified in the Corporation's notice to the Investors pursuant to this Section (B)6. If the Corporation has not sold such New Securities within such 90 day period, the Corporation shall not thereafter issue or sell any such New Securities without again first offering such securities to all Investors in the manner provided in this Section (B)6.

(e) **Termination of Preemptive Rights.** The preemptive rights set forth above shall expire upon and not include the Corporation's initial public offering registered under the 1933 Act prior to or in connection with which all outstanding shares of Preferred Stock will be automatically converted to Common Stock; *provided, however*, that nothing in this Section (B)6 shall be deemed to waive any contractual rights of the holders of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock to participate in the Corporation's initial public offering.

(f) **Transfer of Preemptive Rights.** The preemptive rights granted to each Investor under this Section (B)6 shall be non-transferable, except that such rights may be transferred or assigned (but only with all related obligations) by an Investor to a Qualified Transferee (as defined below); *provided*, that the Corporation is given written notice at the time of or within a reasonable time after any transfer or assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such rights are being transferred or assigned. For purposes of this Section (B)6, a "**Qualified Transferee**" shall mean any person (A) who is an affiliate (as such term is defined in Rule 405 promulgated under the 1933 Act) of an Investor, or (B) who is a partner, shareholder or member of an Investor, or a grantor or beneficiary of an Investor that is a trust.



7. **CONVERSION.** The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock shall have the following rights with respect to the conversion of the Preferred Stock into shares of Common Stock (the “*Conversion Rights*”):

(a) **Right to Convert.** Subject to and in compliance with the provisions of this Section (B)7, each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Series A Original Purchase Price by the Series A Conversion Price (as defined below) in effect on the date the certificate is surrendered. The Series A Conversion Price per share of Series A Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.869565217, and shall thereafter be subject to adjustment for stock dividends, combinations, splits or recapitalizations (the “*Series A Conversion Price*”). Subject to and in compliance with the provisions of this Section (B)7, each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B Original Purchase Price by the Series B Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series B Conversion Price per share of Series B Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.2838 and shall be subject to adjustment as set forth in Section (B)7(e) below (the “*Series B Conversion Price*”). Subject to and in compliance with the provisions of this Section (B)7, each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series C Original Purchase Price by the Series C Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series C Conversion Price per share of Series C Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.2022 and shall be subject to adjustment as set forth in Section (B)7(e) below (the “*Series C Conversion Price*”). Subject to and in compliance with the provisions of this Section (B)7, each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series D Original Purchase Price by the Series D Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series D Conversion Price per share of Series D Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.2460 and shall be subject to adjustment as set forth in Section (B)7(e) below (the “*Series D Conversion Price*”). Subject to and in compliance with the provisions of this Section (B)7, each share of Series F Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent

for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series F Original Purchase Price by the Series F Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series F Conversion Price per share of Series F Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.1655 and shall be subject to adjustment as set forth in Section (B)7(e) below (the "**Series F Conversion Price**"). Subject to and in compliance with the provisions of this Section (B)7, each share of Series F-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series F-1 Original Purchase Price by the Series F-1 Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series F-1 Conversion Price per share of Series F-1 Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.1655 and shall be subject to adjustment as set forth in Section (B)7(e) below (the "**Series F-1 Conversion Price**"). Subject to and in compliance with the provisions of this Section (B)7, each share of Series G Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series G Original Purchase Price by the Series G Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series G Conversion Price per share of Series G Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.2151 and shall be subject to adjustment as set forth in Section (B)7(e) below (the "**Series G Conversion Price**"). Subject to and in compliance with the provisions of this Section (B)7, each share of Series H Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series H Original Purchase Price by the Series H Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series H Conversion Price per share of Series H Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.2520 and shall be subject to adjustment as set forth in Section (B)7(e) below (the "**Series H Conversion Price**"). Subject to and in compliance with the provisions of this Section (B)7, each share of Series I Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series I Original Purchase Price by the Series I Conversion Price (as defined below) applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The Series I Conversion Price per share of Series I Preferred Stock as of the filing date of this Tenth Amended and Restated Certificate of Incorporation shall be equal to \$0.2817 and shall be subject to adjustment as set forth in Section (B)7(e) below (the "**Series I Conversion Price**").

(b) **Automatic Conversion.** Each share of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price immediately upon the earlier to occur of (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the 1933 Act, covering the offer and sale of securities for the account of the Corporation to the public at a price per share of Common Stock of not less than four times the Series F Original Purchase Price (after adjusting for stock dividends, combinations, splits or recapitalizations) with aggregate cash proceeds to the Corporation of at least \$20,000,000 (a "**Qualified Public Offering**"), or (ii) the date specified by affirmative election of: (1) the holders of a majority of the outstanding shares of Series F Preferred Stock (voting as a separate class), and (2) the holders of a majority of the outstanding shares of the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, to convert such shares into Common Stock.

(c) **Mechanics of Conversion.**

(i) **Optional Conversion.** Before any holder of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock shall be entitled to convert shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such shares and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock or to the nominee or nominees of such holder a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of (i) a conversion into fractional shares of Common Stock in accordance with Section (B)7(e)(vii)(A) and (ii) any declared but unpaid dividends on the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock being converted. 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 such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the 1933 Act, the conversion may, at the option of any holder tendering Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I

Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) **Automatic Conversion.** Upon the occurrence of either of the events specified in Section (B)7(b) above, the outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock which are subject to conversion shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however* that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, the holders of such shares of Preferred Stock shall surrender the certificates representing such shares (or such reasonable agreement in the case of lost, stolen or destroyed certificates) at the office of the Corporation or any transfer agent for the Corporation. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any declared but unpaid dividends and any declared but unpaid dividends, and the value of any fractional shares shall be paid in accordance with the provisions of Section (B)7(c)(i) above.

(d) **Reservation of Stock Issuable upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, in addition to such other remedies as shall be available to the holder of such shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1

Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation of the Corporation.

(e) **Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and Series I Conversion Price Adjustments for Certain Dilutive Issuances, Splits and Combinations.** The Series A Conversion Price shall not be subject to adjustment pursuant to Section (B)7(e)(i) but shall be subject to adjustment pursuant to Sections (B)7(e)(ii)-(v). The Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and Series I Conversion Price shall be subject to adjustment from time to time as follows:

(i) **Adjustments for Dilutive Issuances.**

(A) (1) **Series B Preferred Stock.** If the Corporation shall issue, after the date hereof, any Additional Stock (as defined below) without consideration or for a consideration per share less than the Series F Original Purchase Price (subject to adjustments for stock dividends, combinations, splits, recapitalizations or the like), the Series B Conversion Price shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price determined by multiplying such Series B Conversion Price by a fraction, the numerator of which shall be sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series B Conversion Price in effect immediately prior to the deemed issuance of such Additional Stock, plus (3) the number of issued and outstanding shares of Common Stock immediately prior to the deemed issuance of Additional Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like); and the denominator of which shall be the sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the number of issued and outstanding shares of Common Stock immediately prior to the deemed issuance of Additional Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like), plus (3) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below. Notwithstanding the foregoing, if any adjustment to the Series B Conversion Price

resulting from the issuance of Additional Stock pursuant to this Section would result in an adjustment to the Series B Conversion Price which is greater than a fraction, the numerator of which shall be sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series F Original Purchase Price (subject to adjustment for stock dividends, combinations, splits, recapitalizations or the like); and the denominator of which shall be the sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below (the "**Junior Preferred Anti-Dilution Adjustment Cap**"), then the Series B Conversion Price shall be adjusted to the extent of the Junior Preferred Anti-Dilution Adjustment Cap and no further. For the avoidance of doubt, if the issuance of Additional Stock would result in a Series B Conversion Price equal to 95% of the Series B Conversion Price prior to such issuance (but for application of the previous sentence) and the Junior Preferred Anti-Dilution Adjustment Cap for such issuance were 97%, then the Series B Conversion Price resulting from such issuance would, in such case, be equal to 97% of the Series B Conversion Price prior to such issuance.

(2) **Series C Preferred Stock.** If the Corporation shall issue, after the date hereof, any Additional Stock without consideration or for a consideration per share less than the Series F Original Purchase Price (subject to adjustments for stock dividends, combinations, splits, recapitalizations or the like), the Series C Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price determined by multiplying such Series C Conversion Price by a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series C Conversion Price in effect immediately prior to the deemed issuance of such Additional Stock; and the denominator of which shall be the sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately

prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below. Notwithstanding the foregoing, if any adjustment to the Series C Conversion Price resulting from the issuance of Additional Stock pursuant to this Section would result in an adjustment to the Series C Conversion Price which is greater than the Junior Preferred Anti-Dilution Adjustment Cap, then the Series C Conversion Price shall be adjusted to the extent of the Junior Preferred Anti-Dilution Adjustment Cap and no further. For the avoidance of doubt, if the issuance of Additional Stock would result in a Series C Conversion Price equal to 95% of the Series C Conversion Price prior to such issuance (but for application of the previous sentence) and the Junior Preferred Anti-Dilution Adjustment Cap for such issuance were 97%, then the Series C Conversion Price resulting from such issuance would, in such case, be equal to 97% of the Series C Conversion Price prior to such issuance.

**(3) Series D Preferred Stock.** If the Corporation shall issue, after the date hereof, any Additional Stock without consideration or for a consideration per share less than the Series F Original Purchase Price (subject to adjustments for stock dividends, combinations, splits, recapitalizations or the like), the Series D Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price determined by multiplying such Series D Conversion Price by a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series D Conversion Price in effect immediately prior to the deemed issuance of such Additional Stock; and the denominator of which shall be the sum of (1) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock would be converted if fully converted immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below. Notwithstanding the foregoing, if any adjustment to the Series D Conversion Price resulting from the issuance of Additional Stock pursuant to this Section would result in an adjustment to the Series D Conversion Price which is greater than the Junior Preferred Anti-Dilution Adjustment Cap, then the Series D Conversion Price shall be adjusted to the extent of the Junior Preferred Anti-Dilution Adjustment Cap and no further. For the avoidance of doubt, if the issuance of Additional Stock would result in a Series D Conversion Price equal to 95% of the Series D Conversion Price prior to such issuance (but for application of the previous sentence) and the Junior Preferred Anti-Dilution Adjustment Cap for such issuance were 97%, then the Series D Conversion Price resulting from such issuance would, in such case, be equal to 97% of the Series D Conversion Price prior to such issuance.

(4) **Series F Preferred Stock.** If the Corporation shall issue, after the date upon which any shares of Series F Preferred Stock were first issued (the "*Series F Issue Date*"), any Additional Stock without consideration or for a consideration per share less than the Series F Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Series F Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price equal to the consideration per share of the Additional Stock so issued; provided, however, that Additional Stock issued or sold (or deemed issued or sold) without consideration shall be deemed to have been sold for \$0.001 per share.

(5) **Series F-1 Preferred Stock.** If the Corporation shall issue, after the date hereof, any Additional Stock without consideration or for a consideration per share less than the Series F Original Purchase Price (subject to adjustments for stock dividends, combinations, splits, recapitalizations or the like), the Series F-1 Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price determined by multiplying such Series F-1 Conversion Price by a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series F-1 Conversion Price in effect immediately prior to the deemed issuance of such Additional Stock; and the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below. Notwithstanding the foregoing, if any



adjustment to the Series F-1 Conversion Price resulting from the issuance of Additional Stock pursuant to this Section would result in an adjustment to the Series F-1 Conversion Price which is greater than the Junior Preferred Anti-Dilution Adjustment Cap, then the Series F-1 Conversion Price shall be adjusted to the extent of the Junior Preferred Anti-Dilution Adjustment Cap and no further. For the avoidance of doubt, if the issuance of Additional Stock would result in a Series F-1 Conversion Price equal to 95% of the Series F-1 Conversion Price prior to such issuance (but for application of the previous sentence) and the Junior Preferred Anti-Dilution Adjustment Cap for such issuance were 97%, then the Series F-1 Conversion Price resulting from such issuance would, in such case, be equal to 97% of the Series F-1 Conversion Price prior to such issuance.

**(6) Series G Preferred Stock.** If the Corporation shall issue, after the date hereof, any Additional Stock without consideration or for a consideration per share less than the Series G Original Purchase Price (subject to adjustments for stock dividends, combinations, splits, recapitalizations or the like), the Series G Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price determined by multiplying such Series G Conversion Price by a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series G Conversion Price in effect immediately prior to the deemed issuance of such Additional Stock; and the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of

Additional Stock), plus (2) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below.

**(7) Series H Preferred Stock.** If the Corporation shall issue, after the date hereof, any Additional Stock without consideration or for a consideration per share less than the Series H Original Purchase Price (subject to adjustments for stock dividends, combinations, splits, recapitalizations or the like), the Series H Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price determined by multiplying such Series H Conversion Price by a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series H Conversion Price in effect immediately prior to the deemed issuance of such Additional Stock; and the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below.

**(8) Series I Preferred Stock.** If the Corporation shall issue, after the date hereof, any Additional Stock without consideration or for a consideration per share less than the Series I Original Purchase Price (subject to adjustments for stock dividends, combinations, splits, recapitalizations or the like), the Series I Conversion Price in effect immediately prior to each such issuance shall automatically (except as otherwise provided in this Section (B)7(e)(i)) be adjusted to a price determined by multiplying such Series I Conversion

Price by a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock), plus (2) the quotient obtained by dividing: (x) the aggregate consideration received by the Corporation (calculated pursuant to Section (B)7(e)(i)(C) and (D) below) by: (y) the Series I Conversion Price in effect immediately prior to the deemed issuance of such Additional Stock; and the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock) with such number of shares of Common Stock being determined on a fully-diluted and as converted basis (determined as if all Preferred Stock had been fully converted into Common Stock, and (x) all options or warrants to purchase or rights to subscribe for capital stock of the Corporation, and (y) all indebtedness and securities, by their terms convertible into or exchangeable for capital stock of the Corporation or options to purchase or rights to subscribe for such convertible or exchangeable securities, had all (as described in such (x) and (y)) been fully converted or exercised into shares of Common Stock (and if such securities or instruments are exercisable for a security of the Corporation, other than Common Stock, then determined as if the resulting securities were fully converted into shares of Common Stock, if so convertible) immediately prior to such sale or issuance of Additional Stock (but not taking into account any anti-dilution provisions triggered by such sale or issuance of Additional Stock), plus (2) the number of shares of such Additional Stock issued or deemed issued pursuant to Section (B)7(e)(i)(E) below.

(B) No adjustment of the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price, or Series I Conversion Price, as applicable, shall be made in an amount less than one one-hundredth of one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in Sections (B)7(e)(i)(E)(3) and (4) below, no adjustment of such Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and Series I Conversion Price, as applicable pursuant to this Section (B)7(e)(i)(B) shall have the effect of increasing the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion

Price, Series G Conversion Price, Series H Conversion Price or Series I Conversion Price, respectively, in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash received by the Corporation after deducting any discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board irrespective of any accounting treatment. If, however, the holders of: (i) a majority of the then-outstanding shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, voting together as a single class on an as-converted to Common Stock basis; or (ii) a majority of the then-outstanding shares of Series F Preferred Stock, voting as a single class, disagree, through written notice of such disagreement sent to the Board within 10 business days after the Board notifies them of its determination of fair value, with the fair value determination placed on non-cash consideration by the Board, then such dissenting holders may cause the fair value of such non-cash consideration to be determined in accordance with the procedure set forth in Section B2(d)(i)(C).

(E) In the case of the issuance (whether before, on or after the date hereof) of options to purchase or rights to subscribe for Additional Stock, securities, by the terms convertible into or exchangeable for Additional Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, except as otherwise specifically provided, the following provisions shall apply for all purposes of this Section (B)7(e):

(1) The aggregate maximum number of shares of Additional Stock deliverable upon exercise of such options to purchase or rights to subscribe for Additional Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Section (B)7(e)(i)(C) and (D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Additional Stock covered thereby. However, no further adjustments in the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price or Series I Conversion Price shall be made upon the subsequent issue of such convertible or exchangeable securities or shares of Common Stock upon the exercise of such options to purchase or rights to subscribe for shares.

(2) The aggregate maximum number of shares of Additional Stock deliverable upon conversion or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the

Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or declared dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections (B)7(e)(i)(C) and (D)). However, no further adjustments in the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price or Series I Conversion Price shall be made upon the subsequent conversion or exchange of such convertible or exchangeable securities.

(3) In the event of any change in the number of shares of Additional Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including but not limited to, a change resulting from the antidilution provisions thereof, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price, the Series F Conversion Price, the Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and the Series I Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment in the number of shares of Additional Stock deliverable or in the consideration payable to the Corporation shall be made upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price, the Series F Conversion Price, the Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and the Series I Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities shall be recomputed to reflect the issuance of only the number of shares of Additional Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to Sections (B)7(e)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either (B)7(e)(i)(E)(3) or (4). Notwithstanding anything herein to the contrary, any such adjustments relating to such options or convertible or exchangeable securities shall not, in the aggregate increase the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price or Series I Conversion Price above the Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price or Series I Conversion Price, respectively, that would have been effected had no adjustments ever been made for such options or convertible or exchangeable securities.

(F) “*Additional Stock*” shall mean any securities issued (or deemed to have been issued pursuant to Section (B)7(e)(i)(E)) by the Corporation after the date hereof, other than:

(1) Common Stock or Common Stock Equivalents issued pursuant to a transaction described in Section (B)7(e)(ii), (iii), (iv) or (v) hereof;

(2) Shares of Common Stock of the Corporation issuable or issued to employees, officers, consultants or directors of the Corporation pursuant to the terms of the Corporation’s 2000 Long Term Incentive Plan, the Corporation’s 2000 Non-Employee Director and Consultant Plan, and the Corporation’s 2005 Stock Incentive Plan, or any other equity incentive plan or arrangement approved by the Board;

(3) Shares of Common Stock issued or issuable in an initial public offering registered under the 1933 Act in connection with which all outstanding shares of Preferred Stock will be automatically converted to Common Stock;

(4) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock;

(5) Shares of Common Stock, or other securities, warrants, rights, options or other convertible securities issued pursuant to any equipment leasing arrangement, commercial credit arrangement or debt financing from a bank or similar financial institution, and approved by the Board;

(6) Shares of Common Stock issued for consideration other than cash pursuant to a license, merger, consolidation, acquisition or similar business combination approved by the Board;

(7) Up to 400,071 shares of Series D Preferred Stock (as adjusted for stock splits, combinations, dividends, recapitalizations or the like) pursuant to the warrant issued by the Corporation to RBC Centura Bank in connection with the Loan Agreement or other securities or rights convertible or exchangeable for such shares of Series D Preferred Stock;

(8) Up to 417,650 shares of Series F Preferred Stock (as adjusted for stock splits, combinations, dividends, recapitalizations or the like) pursuant to a warrant issued by the Corporation to RBC Centura Bank in connection with Third Amendment to the Loan Agreement or other securities or rights convertible or exchangeable for such shares of Series F Preferred Stock;

(9) Up to 135,827 shares of Series B Preferred Stock (as adjusted for stock splits, combinations, dividends, recapitalizations or the like) pursuant to a warrant issued by the Corporation to Legacy Securities Corp. dated October 13, 2000, or other securities or rights convertible or exchangeable for such shares of Series B Preferred Stock;

(10) Up to 569,870 shares of Common Stock (as adjusted for stock splits, combinations, dividends, recapitalizations or the like) pursuant to a warrant that is to be issued in connection with a Letter Agreement dated January 23, 2001 entered into between the Corporation and Korn/Ferry International;

(11) Up to 7,621,220 shares of Common Stock (as adjusted for stock splits, combinations, dividends, recapitalizations or the like) pursuant to a warrant issued by the Corporation to Escalate Capital I, L.P.;

(12) Up to a total aggregate number of 2,827,177 shares of its capital stock (determined on an as-converted basis, and as adjusted for stock splits, combinations, dividends, recapitalizations or the like) where such shares would not otherwise be excluded from the definition of Additional Stock under any of the other provisions of this Section (B)7(e)(i)(F) (for the avoidance of doubt, if 500,000 shares (not otherwise excluded hereunder from the definition of Additional Stock) were issued in August 2007, another 2,000,000 shares (not otherwise excluded hereunder from the definition of Additional Stock) were issued in an unrelated transaction in November 2007, and in a third unrelated transaction, 330,000 shares (not otherwise excluded hereunder from the definition of Additional Stock) were issued in December 2007, making the aggregate number issued 2,830,000, then the first 2,827,177 shares would not be considered "Additional Stock" under (B)7(e)(i)(F) and the last 2,823 shares issued would be considered "Additional Stock" under (B)7(e)(i)(F));

(13) The Follow-On Shares (as defined in the Purchase Agreement) issued pursuant to the Purchase Agreement;

(14) The Warrants and all shares of Series F Preferred Stock and Common Stock issued or issuable upon exercise of the Warrants and all shares of Common Stock issued or issuable upon conversion thereon;

(15) Any other securities issued by the Corporation, if: (1) the holders of a majority of the then-outstanding shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock, and Series I Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, and (2) the holders of a majority of the then-outstanding shares of Series F Preferred Stock (voting as a separate class), consent in writing to exclude such securities from the definition of "Additional Stock" hereunder; and

(16) Up to 588,235 shares of Series G Preferred Stock (as adjusted for any stock dividends, combinations, recapitalizations or the like) pursuant to a warrant issued by the Corporation to Pentech Financial Services, Inc. and all shares of Common Stock issued or issuable upon conversion thereon.

(ii) Adjustment for Common Stock Dividends and Distributions. If the Corporation should at any time or from time to time after the date hereof fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or

entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof) then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and Series I Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section (B)7(e)(i)(E).

(iii) Adjustment for Subdivisions and Combinations. If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and Series I Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(iv) Other Distributions. If the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section (B)7(e)(i), then, in each such case for the purpose of this Section (B)7(e)(iv), the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock, as applicable, are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(v) Recapitalization. If at any time or from time to time the Common Stock is changed into the same or a different number of shares of any class or classes of stock by recapitalization (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section (B)7 or Section (B)2)), in any such event each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock shall then have the right to convert such stock into



the kind and amount of stock and other securities and property receivable upon such recapitalization by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock could have been converted immediately prior to such recapitalization, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section with respect to the rights of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock after the recapitalization to the end that the provisions of this Section (including adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and Series I Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(vi) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section (B)7 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock against impairment.

(vii) No Fractional Shares and Certificate as to Adjustments.

(A) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock the holder is converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

(B) Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price or Series I Conversion Price pursuant to this Section (B)7, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price, Series F Conversion Price, Series F-1 Conversion Price, Series G Conversion Price, Series H Conversion Price and the Series I Conversion Price at the time in effect immediately prior to and after such adjustment or readjustment, and (C) 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 one share of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock or Series I Preferred Stock.

(viii) Notices of Record Date. In the event of (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof which are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock or (ii) any Acquisition or Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall deliver to each holder of Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend distribution or right, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, 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 Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**8. REDEMPTION.** The Corporation shall not be obligated to redeem the Series A Preferred Stock. The Corporation shall be obligated to redeem the outstanding shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock as follows:

(a) The holders of a majority of either the outstanding shares of Series F Preferred Stock, a majority of the outstanding shares of Series G Preferred Stock, a majority of the outstanding shares of Series H Preferred Stock or a majority of the outstanding shares of Series I Preferred Stock (the "***Series F/G/H/I Requisite Holders***") may elect to require the Corporation to redeem (the "***Series F/G/H/I Mandatory Redemptions***") their series of Preferred Stock (and the Series F-1 Preferred Stock) in four annual installments commencing on a date no earlier than April 28, 2010 (the "***Initial Series F/G/H/I Notice Date***"), and which redemption shall initially occur as provided herein on the date (the "***Initial Series F/G/H/I Redemption Date***") that is 90 days following the date that the Series F/G/H/I Requisite Holders give written notice (the "***Series F/G/H/I Redemption Notice***") to the Corporation of such election, which Series F/G/H/I Redemption Notice must include the name of each of the Series F/G/H/I Requisite Holders and which may be delivered to the Corporation at any time prior to the Initial Series F/G/H/I Notice Date and anytime thereafter. Failure to give such notice will not affect the rights of the Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock granted hereunder, but may cause the Initial Series F/G/H/I Redemption Date to be delayed. Within 10 days of the Corporation's receipt of the Series F/G/H/I Redemption Notice, the Corporation shall give written notice (the "***Corporation Series F/G/H/I Redemption Notice***") to all holders of Series F Preferred Stock, all holders of Series F-1 Preferred Stock, all holders of Series G Preferred Stock, all holders of Series H Preferred Stock and all holders of Series I Preferred Stock of the election to redeem by the Series F/G/H/I Requisite Holders. Any holder of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock who is not named as a Series F/G/H/I Requisite Holder in the Series F/G/H/I Redemption Notice may elect not to have its shares of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock redeemed (a "***Non-Redeeming Series F/G/H/I Holder***"), but instead to have all such shares remain outstanding. A Non-Redeeming Series F/G/H/I Holder must give notice of its election not to redeem its shares of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock within 20 days (the "***Series F/G/H/I Redemption Election Period***") of its receipt of the Corporation Series F/G/H/I Redemption Notice. Subject to Subsection 8(f), the Corporation shall effect the Series F/G/H/I Mandatory Redemptions on each Series F/G/H/I Redemption Date (as defined below) by paying cash in exchange for each share of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock to be redeemed on such Series F/G/H/I Redemption Date in an amount equal to (A) with respect to the Series F Preferred Stock and the Series F-1 Preferred Stock, the greater of (the "***Series F Redemption Price***" and the "***Series F-1 Redemption Price***", as applicable) (i) the Appraised Value (as defined in Section (B)(8)(h)) of the Series F Preferred Stock, or (ii) two times the Series F Original Purchase Price (subject to adjustment as provided herein) plus all declared and unpaid dividends on such Series F/G/H/I Redemption Date with respect to each share of Series F Preferred Stock, or two times the Series F-1 Original Purchase Price (subject to adjustment as provided herein) plus all declared and unpaid dividends on such Series F/G/H/I Redemption Date with respect to each share of Series F-1 Preferred Stock, as applicable, (B) with respect to the Series G Preferred Stock, the Series G Original Purchase Price, subject to adjustment as provided herein, plus all declared and unpaid dividends on such Series F/G/H/I Redemption Date with respect to each share of Series G Preferred Stock (the "***Series G Redemption Price***"), (C) with respect to the

Series H Preferred Stock, the Series H Original Purchase Price, subject to adjustment as provided herein, plus all declared and unpaid dividends on such Series F/G/H/I Redemption Date with respect to each share of Series H Preferred Stock (the "**Series H Redemption Price**"), and (D) with respect to the Series I Preferred Stock, the Series I Original Purchase Price, subject to adjustment as provided herein, plus all declared and unpaid dividends on such Series F/G/H/I Redemption Date with respect to each share of Series I Preferred Stock (the "**Series I Redemption Price**"). The Series F/G/H/I Mandatory Redemptions shall be effected in three installments (each, a "**Series F/G/H/I Redemption Date**") consisting of (i) an initial redemption on the first anniversary of the Initial Series F/G/H/I Redemption Date, of 33% of all outstanding shares of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock subject to redemption as of such date, (ii) a second redemption on the second anniversary of the Initial Series F/G/H/I Redemption Date, of 50% of all outstanding shares of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock subject to redemption as of such date, and (iii) a third redemption on the third anniversary of the Initial Series F/G/H/I Redemption Date, of all outstanding shares of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock subject to redemption as of such date. The third and final payment of the Series F Redemption Price, Series F-1 Redemption Price, Series G Redemption Price, Series H Redemption Price and the Series I Redemption Price shall be referred to hereunder as the "**Final Series F/G/H/I Redemption Payment**." Any redemption effected pursuant to this paragraph shall be made pro rata on the basis of the aggregate Series F Redemption Price, Series F-1 Redemption Price, Series G Redemption Price, Series H Redemption Price and Series I Redemption Price payable to the then current holders of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock (other than the Non-Redeeming Series F/G/H/I Holders). If any date fixed for redemption of shares pursuant to this paragraph is a Saturday, Sunday or legal holiday, then such redemption shall occur on the first business day thereafter.

(b) If (x) the Final Series F/G/H/I Redemption Payment has been made in full and (y) the Corporation has not consummated its initial public offering, and any shares of Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock remain outstanding, then upon notice (the "**Election Notice**") provided by holders of (A) with respect to the Series B Preferred Stock, a majority of the then outstanding Series B Preferred Stock, (B) with respect to the Series C Preferred Stock, a majority of the then outstanding Series C Preferred Stock or (C) with respect to the Series D Preferred Stock, a majority of the then outstanding Series D Preferred Stock (in any such case, the "**Initiating Holders**"), the Corporation shall redeem (the "**Mandatory Redemption**") (i) the shares of Series B Preferred Stock, Series C Preferred Stock and /or Series D Preferred Stock held by the Initiating Holders and (ii) the shares of Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock held by holders that provide notice to the Corporation during the Redemption Election Period (defined below) (collectively with the Initiating Holders, the "**Redeeming Holders**"). Within 10 days of the Corporation's receipt of the Election Notice, the Corporation shall give written notice (the "**Initial Redemption Notice**") to all other holders of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock of the election to redeem, and each such holder shall have the right, exercisable upon written notice within 20 days of the receipt of the Initial Redemption Notice (which period, together with the Series F/G/H/I

Redemption Election Period, as defined above, shall be referred to herein as a “**Redemption Election Period**”) to participate in such redemption. Upon receipt of such notices, the Corporation shall redeem the shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock subject to redemption, to the extent that lawfully available funds exist therefor, commencing on the 90th day after the determination of the final Appraised Value in connection with such Election Notice is made (such date being referred to herein as the “**Post-Election Date**”), and also then on each of the first two anniversaries of the Post-Election Date, according to the percentages below:

<u>Date of Redemption</u>	<u>% of Shares of Preferred Stock then Outstanding to be Redeemed</u>
Post-Election Date	33 <sup>1</sup> / <sub>3</sub> % of all shares of Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock requested to be redeemed and subject to redemption on such date.
First Anniversary of Post-Election Date	50% of all shares of Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock requested to be redeemed and subject to redemption on such date.
Second Anniversary of Post-Election Date	all shares of Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock requested to be redeemed and subject to redemption on such date.

The date upon which any redemption of shares of Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock occurs shall be referred to herein as a “**Junior Preferred Redemption Date**”. Where applicable below, the term “Redemption Date” without qualification shall mean either a “Series F/G/H/I Redemption Date” or a “Junior Preferred Redemption Date,” as required by context. If any Redemption Date is a Saturday, Sunday or legal holiday, then such redemption shall occur on the first business day thereafter.

(c) The Corporation shall effect such redemptions on the applicable Junior Preferred Redemption Date by paying in cash in exchange for the shares of Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock to be redeemed a sum equal to the greater of (i) two times the sum of the applicable Original Purchase Price per share of Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock plus all declared and unpaid dividends with respect to such shares, computed to such Redemption Date or (ii) the Appraised Value, as provided in Section (B)(8)(h). Where applicable below, the term “Redemption Price” without qualification shall mean either the Series F Redemption Price as defined in Section (B)(8)(a), the Series F-1 Redemption Price as defined in Section (b)(8)(A), the Series G Redemption Price as defined in Section (B)(8)(a), the Series H Redemption Price as

defined in Section (B)(8)(a), the Series I Redemption Price as defined in Section (B)(8)(a) or the redemption price of the Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock computed in accordance with this Section (B)(8)(c), as required by context.

(d) Not less than 30 days nor more than 45 days after the expiration of the applicable Redemption Election Period, the Corporation shall give written notice (the "***Second Redemption Notice***") to each holder of record (at the close of business on the business day next preceding the day on which the Second Redemption Notice is given) of the Preferred Stock to be redeemed, at the address of such holder last shown on the records of the Corporation, notifying such holder of the redemption to be effected, specifying the number of shares of Preferred Stock to be redeemed from such holder on each Redemption Date (computed with respect to any redemption pursuant to Section (B)(8)(a), (b) or (c) above on a pro rata basis in accordance with the aggregate Redemption Price payable to all such holders thereof), the Redemption Price(s) (including the Appraised Value, if applicable, of the shares of Preferred Stock to be redeemed), the Redemption Dates, and the method of payment (check or wire transfer) of the Redemption Price(s) upon surrender of their share certificates. Except as provided in Section (B)(8)(e), on or after each Redemption Date, each holder of Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Second Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. If fewer than the total number of shares of Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Preferred Stock will be issued to the holder without cost to such holder within three business days after surrender of the certificate representing the redeemed shares.

(e) If the funds of the Corporation legally available for redemption of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and/or Series I Preferred Stock to be redeemed on such Redemption Date, then those funds that are legally available will be used to redeem the maximum possible number of shares of Series F Preferred Stock, shares of Series F-1 Preferred Stock, shares of Series G Preferred Stock, shares of Series H Preferred Stock and shares of Series I Preferred Stock from all holders of Series F Preferred Stock, all holders of Series F-1 Preferred Stock, all holders of Series G Preferred Stock, all holders of Series H Preferred Stock and all holders of Series I Preferred Stock (except for the shares held by the Non-Redeeming Series F/G/H/I Holders) based on the aggregate Redemption Price of such shares held by each such holder. If the funds of the Corporation legally available for redemption of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock to be redeemed on such Redemption Date, then those funds that are legally available will be used to redeem: (i) first, the maximum possible number of shares of Series D Preferred Stock and Series C Preferred Stock from holders thereof who have requested redemption pro rata based on the aggregate Redemption Price of such shares held by each such holder; and (ii) second, if funds remain legally available after redemption of all the shares of Series D Preferred Stock and Series C Preferred Stock then due to be redeemed, the

maximum possible number of shares of Series B Preferred Stock from holders thereof who have requested redemption pro rata based on the aggregate Redemption Price of such shares held by each such holder. Any unpaid amounts due hereunder shall accrue interest at the lower of (i) the highest nonusurious rate allowed by applicable law and (ii) the rate of 15% per annum, payable quarterly in arrears. At any time and from time to time thereafter when additional funds of the Corporation are legally available for redemption of shares of Preferred Stock, such funds immediately will be used to redeem the balance of the shares of Preferred Stock which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed according to the priority set forth above, and such funds will not be used for any other purpose, including the redemption of any shares of Preferred Stock that the Corporation is obligated to redeem on any subsequent Redemption Date.

(f) From and after each Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is unable to pay the Redemption Price due to not having sufficient legally available funds therefor, all rights of the holders of such shares as holders of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificates) shall cease and terminate with respect to such shares; *provided, however*, that in the event that shares of Preferred Stock are not redeemed due to a default in payment by the Corporation or because the Corporation does not have sufficient legally available funds therefor, such shares of Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(g) Any shares of Preferred Stock which are redeemed or otherwise acquired by the Corporation will be cancelled and will not be reissued, sold or transferred.

(h) The "*Appraised Value*" of any shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and/or Series F Preferred Stock to be redeemed hereunder shall be the fair market value of such shares, respectively, as established by the Board in good faith immediately following and as of the date of receipt of the applicable Second Redemption Notice, plus any declared but unpaid dividends on such shares (which fair market value shall not include a discount for minority ownership interest or illiquidity). The Corporation shall include the value that has been placed upon the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series F Preferred Stock, as applicable, by the Board with respect to such redemption in the Second Redemption Notice. If the holders of: (i) with respect to the Series B Preferred Stock, a majority of the then outstanding shares of Series B Preferred Stock; (ii) with respect to the Series C Preferred Stock, a majority of the then outstanding shares of Series C Preferred Stock; (iii) with respect to the Series D Preferred Stock, a majority of the then outstanding shares of Series D Preferred Stock; or (iv) with respect to the Series F Preferred Stock, a majority of the then outstanding shares of Series F Preferred Stock; (hereinafter in any such case, the "*Objecting Holders*"), shall give the Corporation written notice prior to the first Redemption Date that they disagree with the Appraised Value for any shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and/or Series F Preferred Stock as determined by the Board, then the Objecting Holders and the Board shall attempt to agree upon the Appraised Value. Should the Objecting Holders and the Board be unable to agree during the 20 day period immediately following the giving of the written notice of such disagreement as to the Appraised Value without the employment of appraisers, then the Appraised Value shall be determined by appraisal. If the Objecting Holders and the Corporation

agree upon one appraiser within 15 days after failing to agree to the Appraised Value, the appraisal shall be conducted by such appraiser. If the Objecting Holders and the Corporation are unable to agree upon one appraiser within such 15-day period, then they shall each select an appraiser experienced in the business of evaluating or appraising the market value of stock and the nature of the Corporation's business. The two appraisers so selected (the "*Initial Appraisers*") shall mutually select a third appraiser experienced in the business of appraising the market value of stock and the nature of the Corporation's business (the "*Additional Appraiser*"). The Additional Appraiser shall then, on or prior to the scheduled Redemption Date, appraise such shares to be redeemed. The Additional Appraiser shall forthwith give written notice of its determination to the Corporation and the Objecting Holders, and such value determination shall be the Appraised Value. The appraisers shall not discount the shares of Preferred Stock for minority ownership interest or illiquidity. If the Initial Appraisers fail to select such Additional Appraiser as provided above, then either the Objecting Holders or the Corporation may after written notice to the other, file a declaratory judgment action in any Court of Chancery in the State of Delaware and each shall cooperate in such motion seeking the appointment of such Additional Appraiser. The Objecting Holders shall pay the expenses and fees of the appraiser selected by the Objecting Holders, proportionally based upon the applicable aggregate Redemption Price of their respective shares. The Corporation shall pay the expenses and fees of the appraiser selected by the Corporation and the expenses and fees of the Additional Appraiser.

9. **NOTICES.** Any notice required by the provisions of this Article 5 to be given to the holders of shares of Preferred Stock shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed facsimile (with confirmation of transmission) if received during normal business hours of the recipient on a business day, or if not, then on the next business day; or (iii) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt (or, in the case of non-U.S. residents, two business days after deposit with an internationally recognized overnight courier, specifying international priority delivery, with written verification of receipt). All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

## **ARTICLE 6 BOARD OF DIRECTORS**

### **(A) DIRECTORS; NUMBER; ELECTION**

The Board shall consist of nine directors. At any annual or special meeting, or pursuant to any consent or any other action taken, for the purpose of electing directors to the Board, (i) the holders of a majority of the then outstanding shares of Series B Preferred Stock shall be entitled to elect one member of the Board (the "*Series B Director*"), and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (ii) the holders of a majority of the then outstanding shares of Series C Preferred Stock shall be entitled to elect one member of the Board (the "*Series C Director*"), and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (iii) the holders of a majority of the then outstanding shares of Series D Preferred Stock shall be entitled to elect one member of the Board (the "*Series D Director*"); (iv) the holders of a majority of the then outstanding shares of Series F Preferred Stock shall be entitled to elect one



member of the Board (the "*Series F Director*," and, together with the Series B Director, the Series C Director, and the Series D Director, the "*Preferred Directors*"), and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (v) the holders of a majority of the then outstanding shares of Series A Preferred Stock and Common Stock, voting as a single class shall be entitled to elect two members of the Board (the "*Series A and Common Stock Directors*"), one of whom shall be the Chief Executive Officer of the Corporation, and to remove from office such directors (other than the Chief Executive Officer) and to fill any vacancy caused by the resignation, death or removal of such directors (other than the Chief Executive Officer); (vi) one director (the "*Mutual Director*") shall be elected by the holders of a majority of the then outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, voting together as a single class (on an as-converted basis) and (vii) the two remaining directors who shall be outside industry experts not affiliated with any holder of capital stock of the Company and not employed by the Company at the time of their election to the Board (each, a "*Mutual Independent Director*") shall be elected by the holders of a majority of the then outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, voting together as a single class (on an as-converted basis). The holders of a majority of the then outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series F-1 Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock, voting together as a single class (on an as-converted basis), shall be entitled to remove from office the Mutual Director and any Mutual Independent Director and to fill the vacancy caused by the resignation, death or removal of any such Mutual director or Mutual Independent Director.

Unless and except to the extent that the bylaws of the Corporation shall otherwise require, the election of directors of the Corporation need not be by written ballot. Except as otherwise provided in this Certificate of Incorporation, each director of the Corporation shall be entitled to one vote per director on all matters voted or acted upon by the Board.

**(B) MANAGEMENT OF BUSINESS AND AFFAIRS OF THE CORPORATION.**

The business and affairs of the Corporation shall be managed by or under the direction of the Board.

**(C) LIMITATION OF LIABILITY**

No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) under Section 174 of the Delaware General Corporation Law; or (d) for any transaction from which the director

derived an improper personal benefit. If the Delaware General Corporation Law hereafter is amended to authorize the further elimination or limitation of personal liability of directors, then the liability of a director of the Corporation, in addition to the elimination and limitation of personal liability provided herein, shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended. Any repeal or modification of this Article 6(C) shall be prospective only and shall not adversely affect any right or protection of or any limitation on the liability of a director of the Corporation existing at or arising out of the facts or incidents occurring prior to the effective date of such repeal or modification. For purposes of this Article 6(C), "fiduciary duty as a director" also shall include any fiduciary duty arising out of serving at the Corporation's request as a director of another corporation, partnership, limited liability company, joint venture or other enterprise, and "liable to the Corporation or its stockholders" also shall include all liability to such other corporation, partnership, limited liability company, joint venture, or other enterprise, and any liability to the Corporation in its capacity as a security holder, joint venturer, partner, member, beneficiary, creditor or investor of or in any such other corporation, partnership, limited liability company, joint venture, trust or other enterprise.

## **ARTICLE 7 INDEMNIFICATION**

Each person who is or was or had agreed to become a director or officer of the Corporation, or each such person who is or was serving or who had agreed to serve at the request of the Board as a director, officer, employee, or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise or nonprofit entity, including service with respect to employee benefit plans (including the heirs, executors, administrators or estate of such person), shall be indemnified by the Corporation to the fullest extent permitted by the Delaware General Corporation Law or any other applicable laws as presently or hereafter in effect. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification greater or different than that provided in this Article 7. Any repeal or modification of this Article 7 shall not adversely affect any right or protection existing hereunder immediately prior to such repeal or modification.

## **ARTICLE 8 AMENDMENT OF BYLAWS**

In furtherance and not in limitation of the powers conferred by the Delaware General Corporation Law, the Board is expressly authorized and empowered to adopt, alter, amend, and repeal the bylaws of the Corporation.

IN WITNESS WHEREOF, this Tenth Amended and Restated Certificate of Incorporation has been signed by the undersigned on this 6th day of February, 2007.

By: /s/ Mark Miller  
Mark Miller, Chief Executive Officer