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**Third Amended and Restated
Certificate of Incorporation
of
Aurora Imaging Technology, Inc.**

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

1. The name of this corporation is Aurora Imaging Technology, Inc. (the "Corporation").
2. The original Certificate of Incorporation of the Corporation (then named MRI Acquisition Corporation) was filed with the Secretary of State of the State of Delaware on April 21, 1999. The Corporation's original Certificate of Incorporation was amended on June 7, 1999 and subsequent amendments thereto were filed July 13, 1999 and June 23, 2000. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on June 18, 2002. Thereafter a Certificate of Designations was filed on September 17, 2004. A Second Amended and Restated Certificate of Incorporation was filed with the Secretary of the State of Delaware on December 21, 2004.
3. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Third Amended and Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Second Amended and Restated Certificate of Incorporation, as heretofore in effect.
4. This Third Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware and the stockholders of the Corporation have given their written consent hereto in accordance with Section 228 of the General Corporation Law of the State of Delaware.
5. The certificate of incorporation of the Corporation, as heretofore in effect, is hereby amended and restated in its entirety to read as follows:

Article I

The name of the corporation is Aurora Imaging Technology, Inc. (hereinafter, the "Corporation").

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Article II

The address of the registered office of the Corporation in the State of Delaware is 32 Loockerman Square, Suite 109, in the City of Dover, 19904, County of Kent. The name of its registered agent at that address is Capitol Corporate Services, Inc.

Article III

The nature of the business or purposes of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL").

Article IV

A. Authorized Shares

Immediately after the time that this Third Amended and Restated Certificate of Incorporation is filed with the Delaware Secretary of State (the "Effective Time"), the total number of shares of all classes of capital stock which the Corporation shall have authority to issue is (i) 85,000,000, consisting of 50,000,000 shares of common stock having a par value of \$0.01 per share (the "Common Stock") and (ii) 35,000,000 shares of preferred stock having a par value of \$0.01 per share of which 10,000,000 shares are hereby designated as Series A Convertible Preferred Stock, 7,000,000 shares are hereby designated as Series B Convertible Preferred Stock and 8,000,000 shares are hereby designated as Series C Convertible Preferred Stock. The designations, powers, preferences and rights, and the qualifications, limitations and restrictions thereof in respect of the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock and the Common Stock of the Corporation are set forth below. The Board of Directors of the Corporation, by resolution in connection with their issuance, shall determine the voting powers, designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions of such rights of the preferred stock that is not otherwise designated herein as Series A Convertible Preferred Stock, Series B Convertible Preferred Stock or Series C Convertible Stock.

B. Preferred Stock

The series of preferred stock designated herein as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock") shall consist of 10,000,000 shares; and the series of preferred stock designated herein as "Series B Convertible Preferred Stock" (the "Series B Preferred Stock") shall consist of 7,000,000 shares and the series of preferred stock designated herein as "Series C Convertible Preferred Stock" (the "Series C Preferred Stock") shall consist of 8,000,000 shares. The Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock are referred to herein collectively as the "Preferred Stock". The Preferred Stock shall have the following rights, preferences, powers and privileges and restrictions, qualifications and limitations:

Section 1. Dividends.

(a) General. In the event that the Board of Directors of the Corporation (the "Board"), shall declare a dividend with respect to the Common Stock of the Corporation, the holders of Preferred Stock shall be entitled to receive, when and as declared by the Board, out of any assets of the Corporation legally available therefor, dividends which shall be distributed among all holders of Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted into Common Stock at the then effective applicable conversion price (as defined in Section 4 hereof) for each series of Preferred Stock. No dividend or distribution shall be declared or paid on any shares of Common Stock unless at the same time an equivalent dividend or distribution is declared or paid on all outstanding shares of Preferred Stock.

(b) Series B and Series C. The Series B Preferred Stock and the Series C Preferred Stock shall be entitled, in addition to the dividend provided for in Section 1(a) above, to an 8% per annum cumulative dividend which shall accrue and be payable only upon a Liquidation of the Corporation.

(c) Series A. The Series A Preferred Stock shall be entitled, in addition to the dividend provided for in Section 1(a) above, to an 8% per annum non-cumulative dividend which shall be paid only if, as and when declared by the Board of Directors.

Section 2. Liquidation.

(a) Rights. In the event of any Liquidation of the Corporation, whether voluntary or involuntary, distributions to the stockholders of the Corporation shall be made in the following manner:

(i) The holders of Series C Preferred Stock shall be entitled to receive, subject to such holders' right to convert their shares of Series C Preferred Stock pursuant to Section 4, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation available for distribution to the holders of Series A Preferred Stock, ~~Series B Preferred Stock or Common Stock~~ by reason of their ownership thereof, an amount equal to the original purchase price per share of each such share of Series C Preferred Stock (as adjusted for any stock splits, stock dividend, recapitalizations or the like with respect to such shares), plus any accrued but unpaid dividends and any declared but unpaid dividends in respect of each such share of Series C Preferred Stock then held by them through the date payment of the foregoing Liquidation preference is made available. If, upon the occurrence of such event, the assets and funds thus distributable among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock so that each holder receives that portion of the assets available for distribution as the amount of the full liquidation preference to which such holder would otherwise be entitled bears to the amount of the full liquidation preference to which all holders of Series C Preferred Stock would otherwise be entitled pursuant to this Section 2(a)(i).

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(ii) The holders of Series B Preferred Stock shall be entitled to receive, subject to such holders' right to convert their shares of Series B Preferred Stock pursuant to Section 4, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation available for distribution to the holders of Series A Preferred Stock or Common Stock by reason of their ownership thereof, an amount equal to the original purchase price per share of each such share of Series B Preferred Stock (as adjusted for any stock splits, stock dividend, recapitalizations or the like with respect to such shares), plus any accrued but unpaid dividends and any declared but unpaid dividends in respect of each such shares of Series B Preferred Stock then held by them through the date payment of the foregoing liquidation preference is made available. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock so that each holder receives that portion of the assets available for distribution as the amount of the full liquidation preference to which such holder would otherwise be entitled bears to the amount of the full liquidation preference to which all holders of Series B Preferred Stock would otherwise be entitled pursuant to this Section 2(a)(ii).

(iii) The holders of Series A Preferred Stock shall be entitled to receive, subject to such holders' right to convert their shares of Series A Preferred Stock pursuant to Section 4, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation available for distribution to the holders of Common Stock by reason of their ownership thereof, an amount equal to the original purchase price per share of each such share of Series A Preferred Stock (as adjusted for any stock splits, stock dividend, recapitalizations or the like with respect to such shares), plus any declared but unpaid dividends in respect of each such share of Series A Preferred Stock then held by them through the date payment of the foregoing liquidation preference is made available. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution (after paying in full the liquidation preference owing to the Series B Preferred Stock) shall be distributed ratably among the holders of the Series A Preferred Stock so that each holder receives that portion of the assets available for distribution as the amount of the full liquidation preference to which such holder would otherwise be entitled bears to the amount of the full liquidation preference to which all holders of Series A Preferred Stock would otherwise be entitled pursuant to this Section 2(a)(iii).

(iv) After payment has been made to the holders of the Preferred Stock of the full amounts to which they shall be entitled as provided in Section 2(a)(i) (ii) and (iii) hereof, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of the Series C Preferred Stock, Series B Preferred Stock and Common Stock in an amount per share as would have been payable had each share of Preferred Stock (other than the Series A Preferred Stock) been converted to Common Stock pursuant to Section 4 immediately prior to such Liquidation provided that, (x) in the case of the Series B Preferred Stock, at such time as the fair market value of a share of Common Stock becomes three times the original purchase price of the Series B Preferred Stock, the right of the Series B Preferred Stock shares to share in distributions under this subparagraph (iv) shall cease, and Series B Preferred Stock shares can share in distributions under this subparagraph (iv) only

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by converting to Common and (y) in the case of the Series C Preferred Stock, at such time as the amount receivable in Liquidation under this Section 2(a)(iv) by the ~~shares of common stock~~ into which each Series C Preferred Stock share may be converted reaches ~~a percentage~~ (hereinafter specified) of the original purchase price of that Series C Preferred Stock share, the right of the Series C Preferred Stock to share in the distribution under this subparagraph shall cease. The percentage referred to in the preceding sentence shall be 150% during the first two years following May 5, 2006 and 200% thereafter. Notwithstanding the preceding language in this subsection 2(a)(iv), in no event shall the amounts paid to the holders of the Series C Preferred Stock pursuant to the Liquidation procedure outlined above exceed the greater of (A) the original purchase price for such shares multiplied by the applicable percentage contained in the preceding sentence in this subsection or (B) the amount to which the shares of Series C Preferred Stock would have been entitled had all of such shares of Series C Preferred Stock been converted to Common Stock immediately prior to such Liquidation.

(b) Definition. For purposes of Section 1 and Section 2, a Liquidation is defined as any liquidation, dissolution or winding up of the Corporation and shall also be deemed to include a sale of the Corporation (through merger, consolidation (other than one in which the holders of capital stock of the Corporation prior to such merger or consolidation continue to hold a majority by voting power of the capital stock of the surviving entity), sale or exclusive license of all or substantially all of the assets or intellectual property of the Corporation).

(c) Computations. For purposes of this Section 2, the amount of assets and surplus funds of the Corporation available for distribution upon a Liquidation of the Corporation shall be determined as follows:

(i) insofar as it consists of cash, it shall be computed as the aggregate amount of cash held by this Corporation at the time of the Liquidation, excluding amounts paid or payable for accrued interest; and

(ii) insofar as it consists of property other than cash, it shall be computed as the fair market value thereof at the time of the Liquidation, as determined in good faith by the Board.

Section 3. Voting.

(a) General. The holders 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 except as otherwise provided in Section 3(c) below or elsewhere herein shall be entitled to vote, together with the holders of Common Stock as a single class, with respect to election of directors and any question or matter upon which holders of Common Stock have the right to vote.

(b) Protective Provisions. Notwithstanding anything to the contrary contained in this Third Amended and Restated Certificate of Incorporation, the consent of the holders of

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shares of Series B Preferred Stock holding at least 2/3rds of the issued and outstanding shares of such Series B Preferred Stock, voting separately as a class, and the consent of the holders of shares of Series C Preferred Stock holding a majority of the issued and outstanding shares of such Series C Preferred Stock, voting separately as a class, shall be required in connection with (i) an amendment or repeal of any provision of the Corporation's Certificate of Incorporation or Bylaws; (ii) the authorization or issuance of shares of any new series of preferred stock, or the authorization or issuance of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock (other than shares of Series C Preferred Stock that may be sold by the Corporation at a price of no less than \$1.98 per share within forty-five days following the Effective Time), or the authorization or issuance of shares of any class or series of stock having any right, preference or priority superior to or on a parity with, in the case of the Series B Preferred Stock, the Series B Preferred Stock or in the case of the Series C Preferred Stock, the Series C Preferred Stock; (iii) the payment of dividends (except as otherwise permitted by this Third Amended and Restated Certificate of Incorporation); (iv) a merger, sale of all, or substantially all of the assets, recapitalization, reorganization, liquidation or dissolution of the Corporation, or any other transaction where a majority interest of the Corporation's voting power is acquired by a person or affiliated group not a shareholder prior to the transaction; (v) the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of capital stock of the Corporation (other than repurchase of Common Stock under a Plan described in (ix) or (xiii) below upon termination of employment or service); (vi) a significant change in the business of the Corporation as conducted as of the Effective Time; (vii) the acquisition of all or substantially all of the properties, assets or stock of any other company or entity; (viii) any loan or extension of credit to any employee, officer or director of the Corporation or any subsidiary (other than advancement of expenses in the ordinary course of business), (ix) any capital expenditures greater than \$100,000 that are not included in the Corporation's budget duly adopted by the Board of Directors for any fiscal year (including expenditures for capital leases and expenditures by subsidiaries), without the prior approval of the Board of Directors, the Series B Directors and the Series C Directors (x) the issuance of any equity securities (other than options or restricted stock issued to employees, consultants, or directors in accordance with the Corporation's 1999 Equity Incentive Plan in effect as of the Effective Time, or in accordance with future plans that are approved by the Board of Directors, the Series B Directors and the Series C Directors (such employees, consultants and directors being collectively referred to herein as "Equity Plan Participants")); (xi) the issuance by any subsidiary of any equity securities other than issuances to the Corporation and issuances approved by the Board of Directors, the Series B Directors and the Series C Directors; (xii) the making of any loan or advance to, or acquisition of any stock or other securities of, any entity unless it is wholly-owned by the Corporation excluding ordinary course financing terms extended to the Corporation's customers; (xiii) the guarantee, directly or indirectly, of any indebtedness or obligations except for trade accounts of any subsidiary arising in the ordinary course of business; or (xv) without the approval of the Board of Directors, the Series B Directors and the Series C Directors, the amendment, modification or adoption of any stock option plan or any transfer, vesting or repurchase provisions with respect to any restricted stock or option with any employee, or any new equity-based agreements that contain more favorable provisions with respect to vesting, repurchase or transfer. Notwithstanding the above, the Corporation may amend its current 1999 Equity Incentive Plan with approval of the Board (but not requiring the separate approval of the Series B Directors or the Series C Directors) to increase the total number

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of shares of common stock reserved for issuance and issuable under the Plan to 6,000,000 shares (as equitably adjusted for stock splits, stock dividends and similar events).

(c) Board of Directors. The Board of Directors shall consist of not more than eight directors. The holders of the Series A Preferred Stock, voting separately as one class, shall be entitled to elect one (1) director of the Corporation, the holders of the Series B Preferred Stock, voting separately as one class, shall be entitled to elect two (2) directors of the Corporation (the "Series B Directors") and the holders of the Series C Preferred Stock, voting separately as one class, shall be entitled to elect two (2) directors (the "Series C Directors"). All remaining directors of the Corporation shall be elected by the holders of the Common Stock and the Preferred Stock, voting together as one class. One such director elected by the Common Stock and Preferred Stock, voting together as a class, must be the Chief Executive Officer of the Corporation and another such director must be an expert in the Corporation's industry. A vacancy in any directorship elected by the holders of any series of Preferred Stock shall be filled only by vote or written consent of the holders of such series of Preferred Stock, consenting or voting, as the case may be, separately as one class. A vacancy in any directorship elected by the holders of the Common Stock and Preferred Stock, voting together as a class, shall be filled by a vote or written consent of the holders of the Common Stock and the Preferred Stock, consenting or voting, as the case may be, together as one class. The directors shall serve for terms extending from the date of their election and qualification until the time of the next succeeding annual meeting of stockholders and until their successors have been elected and qualified. In addition, one of the Series C Directors will be a member of both the Compensation Committee and the Audit Committee. Holders of Series C Preferred Stock shall also have visitation rights for one additional observer (as determined by holders of a majority of the outstanding Series C Preferred Stock) to attend all Board and committee meetings in a non-voting capacity, and shall receive all notices and other materials provided to the Directors. Unless otherwise unanimously agreed upon by the Directors, meetings of the Board will be held no less frequently than quarterly. Directors and observers shall be reimbursed for their travel and other expenses, including but not limited to hotel accommodations, incurred in connection with their attendance at Board meetings or other Corporation business.

Section 4. Conversion. The holders of the Preferred Stock shall have the following conversion rights and obligations (the "Conversion Rights"):

(a) Right to Convert Preferred Stock. Subject to Section 4(c) hereof, each share of 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 the Preferred Stock, into one share of Common Stock subject to adjustment as hereinafter provided. The conversion ratio (initially one-for-one) and conversion price which shall initially be \$.70 per share for the Series A Preferred Stock and the Series B Preferred Stock and \$1.98 per share for the Series C Preferred Stock (in each case the "applicable conversion price") are subject to adjustment as set forth below. Any adjustment in the applicable conversion ratio is determined by dividing the initial applicable conversion price by the adjusted applicable conversion price.

(b) Automatic Conversion. Each share of Series A Preferred Stock and Series B Preferred Stock shall automatically be converted into shares of Common Stock as provided in this Section 4 upon the earlier of (i) the closing of a firm commitment underwritten public

offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of Common Stock to the public with net cash aggregate offering proceeds to the Corporation of not less than \$15,000,000 (a "Qualified Public Offering") or (ii) the affirmative vote of the holders of at least 2/3rds of the issued and outstanding shares of Series B Preferred Stock, voting separately as one class or (iii) when, as a result of a partial liquidation of the Corporation, all shares of Series A Preferred Stock and Series B Preferred Stock receive from the liquidation the full amount of their respective liquidation preferences provided for in Section 2(a)(ii) and (iii) above. In addition, the Series A Preferred Stock shall automatically be converted into shares of Common Stock upon the conversion of all of the Series B Preferred Stock into shares of Common Stock. Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock as provided in this Section 4 upon the earlier of (i) the closing of a Qualified Public Offering or (ii) the affirmative vote of the holders of at least 67% of the issued and outstanding shares of Series C Preferred Stock, voting separately as one class

(c) Mechanics of Conversion. At the option of the Corporation, no fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation may pay to such holder cash equal to such fraction multiplied by the then applicable conversion price with respect to such fractional share. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, (or a lost stock affidavit evidencing such certificate(s) signed by the holder with a reasonable indemnity in a form reasonably satisfactory to the Corporation in case of lost or destroyed stock certificates) at the office of the Corporation or any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that the holder elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock (i) a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, (ii) a check payable to such holder in the amount of any cash amounts payable as a result of the conversion of any shares of Preferred Stock into fractional shares of Common Stock, and (iii) if less than all of the shares of the Preferred Stock represented by such certificate are converted into Common Stock, a certificate representing the shares of Preferred Stock not converted into Common Stock. In the event of any conversion at the election of a holder of Preferred Stock, 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 (or a lost stock affidavit evidencing such certificate(s) signed by the holder with a reasonable indemnity in a form reasonably satisfactory to the Corporation in case of lost or destroyed stock certificates) 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 subsequent to such date.

(d) Adjustment of Applicable Conversion Price. The applicable conversion price with respect to each series of Preferred Stock shall be subject to adjustment as follows:

(i) Adjustments for Subdivisions, Combinations or Consolidations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided or increased (by stock split, stock dividend, recapitalization or otherwise) into a greater number of

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shares of Common Stock, and no equivalent subdivision or increase is made with respect to the Preferred Stock, the respective applicable conversion price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such subdivision or increase, be proportionately decreased and the number of Common Shares into which such Preferred Stock can be converted proportionately increased. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the respective applicable conversion price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased and the number of Common Shares into which such Preferred Stock can be converted proportionately decreased.

(ii) Adjustments for Reclassification, Exchange and Substitution. In the event the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, recapitalization, reclassification, merger, consolidation or otherwise (other than a subdivision or combination of shares provided for above), and no equivalent capital reorganization, reclassification or other change is made with respect to the Preferred Stock, the applicable conversion price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders thereof would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders thereof upon conversion of the Preferred Stock immediately before such change.

(iii) Adjustments to Applicable Conversion Price for Certain Dilutive Issues. Except as provided in subparagraph (iii)D below, if and whenever following the Effective Time the Corporation shall issue or sell, or is, in accordance with subparagraph (iii)C(1) through (iii)C(7) below, deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the respective conversion price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the conversion price for the Series C Preferred Stock shall be reduced as set forth in (iii)A and B below and the conversion price for the Series A Preferred Stock and the Series B Preferred Stock shall be reduced to a price determined by multiplying the conversion price of the Series A Preferred Stock and the Series B Preferred Stock in effect immediately prior to the time of such issue or sale by a fraction (x) the numerator of which shall be (a) the number of shares of Common Stock outstanding prior to such issue or sale, plus (b) the number of shares of Common Stock that the aggregate consideration received by the Corporation for the total number of shares of Common Stock so issued or sold would purchase at such conversion price, and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue or sale plus the number of shares of Common Stock so issued or sold. For purposes of this subsection (iii) including A and B below, Common Stock outstanding shall be calculated on a fully diluted basis, treating all Preferred Stock as converted to Common, all warrants and options as exercised, but excluding Common shares allocated to the Equity Incentive Plan but not the subject of granted options

A Pre-May 5, 2008. If the issue or sale (including any deemed issue or sale) occurs on or before May 5, 2008, the conversion price of the Series C Preferred Stock shall be the price at which such issue or sale occurs;

B Post-May 5, 2008. If the issue or sale (including any deemed issue or sale) occurs after May 5, 2008, the conversion price of the Series C Preferred Stock shall be the price determined by multiplying the conversion price of the Series C Preferred Stock in effect immediately prior to the time of such issue or sale by a fraction (x) the numerator of which shall be (a) the number of shares of Common Stock outstanding prior to such issue or sale, plus (b) the number of shares of Common Stock that the aggregate consideration received by the Corporation for the total number of shares of Common Stock so issued or sold would purchase at such conversion price, and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue or sale plus the number of shares of Common Stock so issued or sold.

C Other Provisions. For purposes of this subparagraph (iii), the following subparagraphs C(1) to C(7) and subparagraphs D and E below shall also be applicable:

C(1) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the conversion price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuances of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph C(3), no adjustment of the conversion price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

C(2) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph C(3), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this subparagraph C, no further adjustment of the conversion price shall be made by reason of such issue or sale.

C(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in subparagraph C(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph C(1) or C(2), or the rate at which Convertible Securities referred to in subparagraph C(1) or C(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the conversion price in effect at the time of such event shall forthwith be readjusted to the conversion price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment the conversion price then in effect hereunder is thereby reduced; and on the expiration of any such Option or the termination of any such right to convert or exchange such Convertible Securities, the conversion price then in effect hereunder shall forthwith be increased to the conversion price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

C(4) Stock Dividends. In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

C(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received *che*

therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

C(6) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

C(7) Treasury Shares. The disposition of any shares of Common Stock owned or held by or for the account of the Corporation shall be considered an issue or sale of Common Stock for the purpose of this subparagraph C.

D Exceptions. The anti-dilution provisions set forth above in this subparagraph (iii) shall not apply to shares of Common Stock issued or issuable at any time: (v) upon conversion of the Preferred Stock authorized herein; (w) to employees, officers, directors and consultants of the Corporation pursuant to the Corporation's 1999 Equity Incentive Plan in effect as of the Effective Time (as the same may be amended to increase the total number of common shares thereunder to 6,000,000 shares (as equitably adjusted for stock splits, stock dividends and similar events)) or pursuant to any one or more future employee stock incentive plans or agreements approved by the Board of Directors and by the Series B Directors or the holders of at least 2/3rds of the issued and outstanding shares of Series B Preferred Stock and approved by the Series C Directors or by the holders of at least 67% of the issued and outstanding shares of Series C Preferred Stock; (x) upon exercise of warrants (which are outstanding as of the Effective Time) to purchase equity securities of the Corporation; (y) upon the consent of the holders of at least 2/3rds of the issued and outstanding shares of Series B Preferred Stock and of the holders of at least 67% of the issued and outstanding shares of Series C Preferred Stock; or (z) upon any dividend or distribution on any shares of Preferred Stock or on any shares of Common Stock referred to in Section 4(d)(iii) D(v) or (w) above.

E Non-Participating Shares. On any round of financing subsequent to the initial sale of Series B Preferred on or before June 30, 2005, where (i) the purchase price is below the Series B Conversion Price in effect immediately prior to such financing; (ii) the aggregate capital raised is less than \$10 million; and (iii) any holder of Series B Preferred fails to participate with other holders of Series B Preferred based on their relative

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Common Stock-equivalent ownership (based solely on conversion of the Series B Preferred) in the portion of the financing designated by a majority of the whole Board of Directors, then the shares of Series B Preferred held by such holder will not be entitled to any anti-dilution adjustment in connection with such financing and shall automatically convert into a new series of Preferred Stock, which shares will be identical to the Series B Preferred Stock except that (i) the shares will be non-voting; (ii) the conversion price for such series shall be the Series B Conversion Price in effect immediately prior to such financing; and (iii) the series will not thereafter be entitled to weighted average anti-dilution protection.

Section 5. Information Rights. The Corporation shall furnish each member of the Board of Directors with an annual budget, annual financial statements audited by an accounting firm of national reputation (or, if approved by the Board of Directors, a regional firm), and quarterly and monthly unaudited financial statements on a timely basis.

Section 6. Registration Rights.

(a) **Demand Registration.** At any time after (i) December 21, 2008, or (ii) six months following the Corporation's initial public offering, whichever is earlier, the holders of at least 20% of the Common Stock issuable upon conversion of the Series B Preferred Stock or the holders of at least 20% of the Common Stock issuable upon conversion of the Series C Preferred Stock may require that the Corporation file a registration statement with regard to such shares of Common Stock. The Corporation shall not be obligated to affect more than two registrations under this demand provision.

(b) **Corporation Registration.** The holders of Common Stock issuable upon conversion of the Preferred Stock of the Corporation and Equity Plan Participants of the Corporation shall be entitled to "piggy-back" registration rights with respect to such shares of Common Stock on registrations by the Corporation, subject to the right of the Corporation and its underwriters to reduce the number of shares proposed to be registered in view of market conditions.

(c) **S-3 Rights.** If the Corporation shall be entitled as a registrant to use Form S-3 and the holders of Common Stock issuable upon conversion of the Series B Preferred Stock request that the Corporation effect a registration on Form S-3 for shares of Common Stock having an aggregate sale price to the public of at least \$1,000,000 or the holders of Common Stock issuable upon conversion of the Series C Preferred Stock request that the Corporation effect a registration on Form S 3 for shares of Common Stock having an aggregate sale price to the public of at least \$1,000,000, the Corporation will cause such shares to be registered.

(d) **Lock-up Agreements.** Each holder of Preferred Stock and each Equity Plan Participant, if requested by the Corporation and the managing underwriter of an underwritten initial public offering by the Corporation of Common Stock, shall not sell or otherwise transfer or dispose of any shares (excluding shares acquired in or following the Corporation's initial public offering) for such period of time as required by the underwriters (not to exceed 180 days) following the effective date of the registration statement for such offering; provided, that: (a) all directors, officers and 1% (or more) stockholders of the Corporation enter into similar agreements; and (b) the Corporation shall use its best efforts to ensure that such

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agreement provides that in the event of any early release, all such holders will be released on a pro rata basis from such market stand-off agreements.

(e) Expenses. All registration expenses, including the fees of one special counsel for the Series B Preferred Stock in an amount not to exceed \$50,000 per registration and of one special counsel for the Series C Preferred Stock in an amount not to exceed \$50,000 per registration, shall be borne by the Corporation; provided, however that any underwriting discounts and commissions and the fees and expenses of special counsel, if any, to the holders of Series A Preferred Stock and or Common Stock shall not be borne by the Corporation.

Section 7. Right of First Refusal. The holders of Series B Preferred Stock and the holders of Series C Preferred Stock shall have a pro-rata right of first refusal with respect to any equity financing of the Corporation, including a right of oversubscription with respect to any preemptive rights that are not exercised. Such rights will terminate upon and not apply to a Qualified Public Offering. Holders of 2/3rds of the issued and outstanding shares of Series B Preferred Stock may waive this right on behalf of all of the holders of Series B Preferred Stock or agree to the appropriate percentage participation on behalf of the class, in such holders' sole discretion. Holders of at least 67% of the issued and outstanding shares of Series C Preferred Stock may waive this right on behalf of all of the holders of Series C Preferred Stock or agree to the appropriate percentage participation on behalf of the class, in such holders' sole discretion. Any purchases made pursuant to this Section 7 shall be made pursuant to a Stock Purchase Agreement reasonably acceptable to the Corporation and the purchasers, which Agreement shall contain, among other things, appropriate and customary representations and warranties and covenants and agreements of the Corporation and the purchasers, and customary closing requirements, which shall include but not be limited to customary resale restrictions, qualification of the shares under applicable federal and state securities laws or an applicable exemption therefrom and receipt of customary opinions of counsel to the Corporation and to the purchasers (in a form satisfactory to the Corporation or the purchasers, as the case may be) regarding the purchase and sale of the shares.

Section 8. Vesting requirements. All shares of Common Stock and options to purchase Common Stock issued to employees and consultants of the Corporation shall be subject to four-year vesting with 25% of the shares vesting on the first anniversary of the date of grant and the remainder vesting annually over the three years following such anniversary.

Section 9. Additional Agreements. All founders and employees of the Corporation will at the request of the Series B Directors execute confidentiality agreements in a form acceptable to the Series B Directors. All founders and employees of the Corporation will also at the request of the Series B Directors execute non-competition and non-solicitation agreements with the Corporation in a form acceptable to the Series B Directors which agreements shall be effective for a one-year period following termination of employment.

C. Common Stock.

Section 1. Priority. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations or restrictions of the Common

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Stock are expressly made subject to and subordinate to those that may be fixed with respect to the Preferred Stock to the extent provided for herein.

Section 2. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board; provided, however, that no dividend or distribution shall be declared or paid on any shares of Common Stock, other than a dividend payable in shares of Common Stock, unless at the same time an equivalent dividend or distribution is declared or paid on all outstanding shares of Preferred Stock.

Section 3. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Article IV B., Section 2 hereof.

Section 4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation provide otherwise.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, and subject to Article IV B., Section 3(b)(i), the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE VIII

The Corporation eliminates the personal liability of each member of its Board of Directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that, to the extent provided by applicable law the foregoing shall not eliminate the liability of a director (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the Delaware Code or (iv) for any transaction from which such director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have

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any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Section 1. Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, agent or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (each such person being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. Notwithstanding anything to the contrary in this Article, except as set forth in Section 7 below, the Corporation shall not indemnify an Indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by the Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

Section 2. Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, agent or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless

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and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses (including attorneys fees) which the Court of Chancery of Delaware or such other court shall deem proper. Notwithstanding anything to the contrary in this Article, the Corporation shall not indemnify an Indemnatee to the extent such Indemnatee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnatee and such Indemnatee is subsequently reimbursed from the proceeds of insurance, such Indemnatee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

Section 3. Indemnification for Expenses of Successful Party. Notwithstanding the other provisions of this Article, to the extent that an Indemnatee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article, or in defense of any claim issue or matter therein or on appeal from any such action, suit or proceeding he shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to the Indemnatee, (ii) an adjudication that the Indemnatee was liable to the Corporation, (iii) a plea of guilty or *nolo contendere* by the Indemnatee, (iv) an adjudication that the Indemnatee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and (v) with respect to any criminal proceeding, an adjudication that the Indemnatee had reasonable cause to believe his conduct was unlawful, the Indemnatee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

Section 4. Notification and Defense of Claim. As a condition precedent to his right to be indemnified, the Indemnatee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving him for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to the Indemnatee. After notice from the Corporation to the Indemnatee of its election so to assume such defense, the Corporation shall not be liable to the Indemnatee for any legal or other expenses subsequently incurred by the Indemnatee in connection with such a claim, other than as provided below in this Section 4. The Indemnatee shall have the right to employ his own counsel in connection with such claim, but the fees and expenses of such counsel incurred after notice to the Corporation of its assumption of the defense thereof shall be at the expense of the Indemnatee unless (i) the employment of counsel by the Indemnatee has been authorized by the Corporation, (ii) counsel to the Indemnatee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and the Indemnatee in the conduct of the defense of such action or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel for the Indemnatee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article. The Corporation shall not be entitled, without the consent of the Indemnatee, to assume the defense of any claim brought by or in the right of the Corporation

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or as to which counsel for the Indemnatee shall have reasonably made the conclusion provided for in clause (ii) above.

Section 5. Advance of Expenses. Subject to the provisions of Section 6 below, in the event that the Corporation does not assume the defense pursuant to Section 4 of this Article of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, any expenses (including attorneys fees) incurred by an Indemnatee in defending a civil or criminal action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter; provided, however, that the payment of such expenses incurred by an Indemnatee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of the Indemnatee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnatee is not entitled to be indemnified by the Corporation as authorized in this Article. Such undertaking shall be accepted without reference to the financial ability of the Indemnatee to make such repayment.

Section 6. Procedure for Indemnification. In order to obtain indemnification or advancement of expenses pursuant to Section 1, 2, 3 or 5 of this Article, the Indemnatee shall submit to the Corporation a written request, including in such request such documentation and information as is reasonably available to the Indemnatee and is reasonably necessary to determine whether and to what extent the Indemnatee is entitled to indemnification or advancement of expenses. Any such indemnification or advancement of expenses shall be made promptly, and in any event within 60 days after receipt by the Corporation of the written request of the Indemnatee, unless with respect to requests under Section 1, 2 or 5 the Corporation determines within such 60-day period that the Indemnatee did not meet the applicable standard of conduct set forth in Section 1 or 2, as the case may be. Such determination shall be made in each instance by (i) a majority of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (ii) a vote of at least 60% of a quorum of the outstanding shares of stock of all classes entitled to vote for directors, voting as a single class, which quorum shall consist of stockholders who are not at that time parties to the action, suit or proceeding in question, (iii) independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation), or (iv) a court of competent jurisdiction.

Section 7. Remedies. The right to indemnification or advances as granted by this Article shall be enforceable by the Indemnatee in any court of competent jurisdiction if the Corporation denies such request, in whole or in part, or if no disruption thereof is made within the 60-day period referred to above in Section 6. Unless otherwise required by law, the burden of proving that the Indemnatee is not entitled to indemnification or advancement of expenses under this Article shall be on the Corporation. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because the Indemnatee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 6 that the Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the Indemnatee has not met the applicable standard of conduct. The Indemnatee's expenses (including attorneys' fees) incurred in connection with successfully establishing his right to

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indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation.

Section 8. Subsequent Amendment. No amendment, termination or repeal of this Article or of the relevant provisions of the General Corporation Law of the State of Delaware or any other applicable laws shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

Section 9. Other Rights. The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of the Indemnitee. Nothing contained in this Article shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article and as limited by applicable law.

Section 10. Partial Indemnification. If an Indemnitee is entitled under any provision of this Article to Indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify the Indemnitee for the portion of such expenses (including attorneys' fees), judgments, fines or amounts paid in settlement to which the Indemnitee is entitled.

Section 11. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

Section 12. Merger or Consolidation. If the Corporation is merged into or consolidated with another corporation and the Corporation is not the surviving corporation, the surviving corporation shall assume the obligations of the Corporation under this Article with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the date of such merger or consolidation.

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Section 13. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 14. Definitions. Terms used herein and defined in Section 145(h) and Section 145(i) of the General Corporation Law of the State of Delaware shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

Section 15. Subsequent Legislation. If the General Corporation Law of the State of Delaware is amended after adoption of this Article to expand further the indemnification permitted to Indemnitees, then the Corporation shall indemnify such persons to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

ARTICLE IX

Meetings of the stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation.

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IN WITNESS WHEREOF, the Corporation has caused this Third Amended and Restated Certificate of Incorporation to be duly executed this 5th day of May, 2006.

AURORA IMAGING TECHNOLOGY, INC.

By: 

Name: Olivia Ho Cheng

Title: President and Chief Executive Officer

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