

**FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**AZIMUTH SYSTEMS, INC.**

Azimuth Systems, Inc. (hereinafter called the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The name of the Corporation is Azimuth Systems, Inc. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 23, 2001 under the name "Azimuth Networks, Inc." (the "Original Certificate of Incorporation"). The Original Certificate of Incorporation was amended and restated on August 7, 2002 (the "Amended and Restated Certificate of Incorporation"). The Amended and Restated Certificate of Incorporation was amended on February 24, 2003 (the "Revised Amended and Restated Certificate of Incorporation"). The Revised Amended and Restated Certificate of Incorporation was amended and restated on July 22, 2003 (the "Second Amended and Restated Certificate of Incorporation"). The Second Amended and Restated Certificate of Incorporation was amended and restated on September 22, 2004 (the "Third Amended and Restated Certificate of Incorporation").

2. This Fourth Amended and Restated Certificate of Incorporation was duly adopted by unanimous written consent of the Board of Directors and written consent of the stockholders of the Corporation in accordance with the applicable provisions of Sections 141, 228, 242 and 245 of the General Corporation Law of the State of Delaware.

3. This Fourth Amended and Restated Certificate of Incorporation restates, integrates and amends the Third Amended and Restated Certificate of Incorporation, as amended to date, and the text of the Third Amended and Restated Certificate of Incorporation, is hereby amended and restated to read as herein set forth in full:

**ARTICLE I.**

The name of the Corporation is Azimuth Systems, Inc.

**ARTICLE II.**

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

**ARTICLE III.**

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

## ARTICLE IV.

The Corporation shall have two classes of stock, common stock, \$0.01 par value per share (the "Common Stock"), and preferred stock, \$0.01 par value per share (the "Preferred Stock"). The total number of shares that the Corporation shall have authority to issue is Fifty Million Four Hundred Thirty-Four Thousand Five Hundred Twenty-Four (50,434,524) shares of capital stock, consisting of (A) Twenty-Eight Million Three Hundred Twenty-Four Thousand Seven Hundred Sixty-Two (28,324,762) shares of Common Stock, and (B) Twenty-Two Million One Hundred Nine Thousand Seven Hundred Sixty-Two (22,109,762) shares of Preferred Stock.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof, in respect of each class of capital stock of the Corporation.

### A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of Preferred Stock of any series.

2. Voting. The holders of Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Dividends may be declared and paid on Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

### B. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issuance of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or

restrictions thereof, including without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the General Corporation Law of Delaware. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise specifically provided in this Certificate of Incorporation, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation.

Five Million Eight Hundred Thousand (5,800,000) shares of the authorized Preferred Stock of the Corporation are hereby designated Series A Convertible Preferred Stock (the "Series A Preferred Stock"), Five Million Six Hundred Seventy Eight Thousand Six Hundred Twenty (5,678,620) shares of the Preferred Stock are hereby designated Series B Convertible Preferred Stock (the "Series B Preferred Stock"), Six Million Two Hundred Nineteen Thousand Three Hundred Seventy Eight (6,219,378) shares of the Preferred Stock are hereby designated Series C Convertible Preferred Stock (the "Series C Preferred Stock" and together with the Series A Preferred Stock, and the Series B Preferred Stock, the "Prior Preferred") and Four Million Four Hundred Eleven Thousand Seven Hundred Sixty-Four (4,411,764) shares of the Preferred Stock are hereby designated Series D Convertible Preferred Stock (the "Series D Preferred Stock" and together with the Prior Preferred sometimes referred to herein as the "Preferred Stock"). The Preferred Stock has the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

1. Dividends.

(a) The holders of shares of Preferred Stock shall be entitled to receive dividends in any fiscal year when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor.

(b) The Corporation shall not declare or pay any cash dividends on shares of Common Stock until each of the holders of the Preferred Stock then outstanding shall have first received, or there shall have been declared and set aside for payment, a cash dividend on each outstanding share of such Preferred Stock in an amount equal to the product of (i) the per share amount, if any, of the dividends to be declared, paid or set aside for the Common Stock, multiplied by (ii) the number of whole shares of Common Stock into which such share of Preferred Stock is then convertible pursuant to Section 4 hereof

(c) The Corporation shall not declare or pay any cash dividends on shares of Prior Preferred until each of the holders of the Series D Preferred Stock then outstanding shall have first received, or there shall have been declared and set aside for payment, a cash dividend in the amount specified in Section 1(b) hereof.

2. Liquidation, Dissolution or Winding Up: Certain Mergers, Consolidations and Asset Sales.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of the Series D Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of the Prior Preferred or the Common Stock or any other class or series of stock ranking on liquidation junior to the Series D Preferred Stock by reason of their ownership thereof, an amount equal to \$1.70 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series D Preferred Stock) plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Series D Preferred Stock the full amount to which they shall be entitled, the holders of the Series D Preferred Stock and any class or series of stock ranking on liquidation on a parity with the Series D Preferred Stock shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) After the payment of all preferential amounts required to be paid to the holders of Series D Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Series D Preferred Stock, upon the dissolution, liquidation or winding up of the Corporation, any remaining assets and funds of the Corporation available for distribution shall be distributed among the holders of the then outstanding Prior Preferred, on a pari passu basis, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Prior Preferred by reason of their ownership thereof, an amount equal to (i) in the case of holders of Series C Preferred Stock, \$1.70 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series C Preferred Stock) plus any dividends declared but unpaid thereon, (ii) in the case of holders of Series B Preferred Stock, \$1.25 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series B Preferred Stock) plus any dividends declared but unpaid thereon, and (iii) in the case of holders of Series A Preferred Stock, \$1.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series A Preferred Stock) plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders, after the payment of all preferential amounts required to be paid to the holders of Series D Preferred Stock and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Series D Preferred Stock, shall be insufficient to pay the holders of the Prior Preferred the full amount to which they shall be entitled, the holders of the Prior Preferred and any class or series of stock ranking on liquidation on a parity with the Prior Preferred shall share ratably in any

distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(c) After the payment of all preferential amounts required to be paid to the holders of Series D Preferred Stock, the Prior Preferred and any other class or series of stock of the Corporation ranking on liquidation on a parity with the Series D Preferred Stock and the Prior Preferred, upon the dissolution, liquidation or winding up of the Corporation, ~~any remaining assets and funds of the Corporation available for distribution shall be distributed among the~~ holders of the then outstanding Common Stock and the holders of the Preferred Stock, pro rata according to the number of shares of Common Stock held by such holders, where, for this purpose, holders of shares of Preferred Stock will be deemed to hold (in lieu of their shares of Preferred Stock) the greatest whole number of shares of Common Stock then issuable upon conversion in full of such Preferred Stock pursuant to Section 4 hereof.

(d) A merger or consolidation in which the Corporation is a constituent party (except any such merger or consolidation involving the Corporation in which the holders of capital stock of the corporation immediately prior to such merger or consolidation continue to hold immediately following such merger or consolidation at least 50% by voting power of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such resulting or surviving corporation), or the sale, conveyance, mortgage, pledge or lease of all or substantially all of the assets of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 2 unless the holders of at least 70% of the votes attributable to the then outstanding shares of Preferred Stock, determined on an as-converted basis as provided in Section 3(a), elect otherwise by giving written notice thereof to the Corporation at least two (2) days before the effective date of such event. If the holders of the Preferred Stock make such an election, the Corporation shall use its best efforts to amend the agreement or plan of merger or consolidation to adjust the rate at which the shares of capital stock of the Corporation are converted into or exchanged for cash, new securities or other property to give effect to such election. If no such notice is given, such event shall be deemed to be a liquidation, dissolution or winding up for the purposes of the Preferred Stock. The amount deemed distributed to the holders of Preferred Stock or Common Stock in connection with a transaction referred to in this Section 2(d) shall be the cash or the value of the property, rights or other securities distributed to such holders by the acquiring person, firm or other entity. The value or property, rights or other securities shall be determined by and in the good faith discretion of the Board of Directors of the Corporation. Payment of preferential amounts required to be paid to the holders of Preferred Stock shall constitute a redemption of such Preferred Stock, and after such payment such shares of Preferred Stock shall cease to be outstanding for any purpose. The Corporation shall promptly provide to the holders of shares of Preferred Stock such information concerning the terms of such merger, consolidation or asset sale and the value of the assets of the Corporation as may reasonably be requested by the holders of Preferred Stock.

### 3. Voting.

(a) Each holder of outstanding shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section 4 hereof), at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Section 3(b), 3(c), 3(d), 3(e), 3(f), 3(g) or 3(h) below or by the provisions establishing any other series of Preferred Stock, holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and any other outstanding series of Preferred Stock shall vote together with the holders of Common Stock as a single class on any actions to be taken by the stockholders of the Corporation.

(b) In the event that the Corporation shall fail to pay in full any amount due for redemption of shares of Preferred Stock pursuant to Section 6 hereof on the date that such redemption amount is due (the "Default Date"), then beginning on such Default Date and continuing until such time as such redemption amount is paid in full, the holders of the Preferred Stock, voting as a separate class, on an as-converted basis as provided in Section 3(a), shall be entitled to elect a majority of the Board of Directors. A vacancy in any directorship elected solely by the holders of the Preferred Stock shall be filled only by vote or written consent in lieu of a meeting of the holders of the Preferred Stock or by any remaining director elected solely by the holders of the Preferred Stock pursuant to this Section 3(b).

(c) So long as any shares of Preferred Stock are outstanding, the holders of record of a majority of the outstanding shares of Preferred Stock, determined on an as-converted basis as provided in Section 3(a), exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (together, the "Preferred Directors"); the holders of record of a majority of the outstanding shares of Common Stock, voting together as a single class, shall be entitled to elect one (1) director of the Corporation; and the remaining three (3) directors shall be elected by a majority of the outstanding shares of Preferred Stock and Common Stock, voting together as a single class. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the votes attributable to the shares of Preferred Stock then outstanding, determined on an as-converted basis as provided in Section 3(a), shall constitute a quorum of the Preferred Stock for the purpose of electing directors by holders of the Preferred Stock, and the presence in person or by proxy of the holders of a majority of the shares of Common Stock then outstanding shall constitute a quorum of the Common Stock for the purpose of electing directors by holders of the Common Stock. Vacancies in any directorship filled by the holders of the Preferred Stock shall be filled only by vote or written consent in lieu of a meeting of the holders of the Preferred Stock or by any remaining director elected by the holders of the Preferred Stock pursuant to this Section 3(c); vacancies in any directorship filled by the holders of the Common Stock shall be filled only by vote or written consent in lieu of a meeting of the holders of Common Stock; and vacancies in any directorship filled by the holders of the Preferred Stock and the Common Stock shall be filled only by vote or written consent in lieu of a meeting of the holders of the Preferred Stock and the Common Stock, voting together as a single class.

(d) *Series A Preferred Stock Special Voting Rights.* So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series A Preferred Stock so as to affect adversely the Series A Preferred Stock (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise), without the written consent or affirmative vote of the holders of not less than 60% of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any shares of capital stock (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) with preference or priority over or on parity with the Series A Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed to affect adversely the Series A Preferred Stock.

(e) *Series B Preferred Stock Special Voting Rights.* So long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series B Preferred Stock so as to affect adversely the Series B Preferred Stock (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise), without the written consent or affirmative vote of the holders of not less than 60% of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any shares of capital stock (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) with preference or priority over or on parity with the Series B Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed to affect adversely the Series B Preferred Stock.

(f) *Series C Preferred Stock Special Voting Rights.* So long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series C Preferred Stock so as to affect adversely the Series C Preferred Stock (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise), without the written consent or affirmative vote of the holders of not less than 60% of the then outstanding shares of Series C Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any shares of capital stock (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) with preference or priority over or on parity with the Series C Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed to affect adversely the Series C Preferred Stock.

(g) *Series D Preferred Stock Special Voting Rights.* So long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series D Preferred Stock so as to affect adversely the Series D Preferred Stock (whether by amendment to the Certificate of

Incorporation or by reclassification, merger, consolidation, reorganization or otherwise), without the written consent or affirmative vote of the holders of not less than 60% of the then outstanding shares of Series D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class. For this purpose, without limiting the generality of the foregoing, the authorization or issuance of any shares of capital stock (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) with preference or priority over or on parity with the Series D Preferred Stock as to the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation shall be deemed to affect adversely the Series D Preferred Stock.

(h) In addition to any other rights provided by law, so long as (i) at least twenty-five percent (25%) of the shares of Prior Preferred issued by the Corporation (such percentage to be proportionately adjusted in the event of any stock splits, stock dividends, recapitalizations or similar events occurring on or after the effective date of this Fourth Amended and Restated Certificate of Incorporation affecting the number of issued and outstanding shares of Preferred Stock) or (ii) at least twenty-five percent (25%) of the shares of Series D Preferred Stock issued by the Corporation (such percentage to be proportionately adjusted in the event of any stock splits, stock dividends, recapitalizations or similar events occurring on or after the effective date of this Fourth Amended and Restated Certificate of Incorporation affecting the number of issued and outstanding shares of Preferred Stock) remain outstanding, the Corporation shall not, without the prior written consent or affirmative vote of (x) if at least twenty-five percent (25%) of the shares of Prior Preferred issued by the Corporation (such percentage to be proportionately adjusted in the event of any stock splits, stock dividends, recapitalizations or similar events occurring on or after the effective date of this Fourth Amended and Restated Certificate of Incorporation affecting the number of issued and outstanding shares of Preferred Stock) remain outstanding, the holders of not less than 60% of the votes attributable to then outstanding shares of Prior Preferred, determined on an-as converted basis as provided in Section 3(a), voting together as a single class, and (y) if at least twenty-five percent (25%) of the shares of Series D Preferred Stock issued by the Corporation (such percentage to be proportionately adjusted in the event of any stock splits, stock dividends, recapitalizations or similar events occurring on or after the effective date of this Fourth Amended and Restated Certificate of Incorporation affecting the number of issued and outstanding shares of Preferred Stock) remain outstanding, the holders of not less than 70% of the votes attributable to then outstanding shares of Series D Preferred Stock, determined on an-as converted basis as provided in Section 3(a), voting together as a single class:

(i) effect, or obligate itself to effect, any merger, sale, lease, assignment, transfer or other conveyance of all or substantially all or any substantial portion of the assets of the Corporation or any subsidiary thereof, or any consolidation or merger involving the Corporation or any subsidiary thereof;

(ii) effect, or obligate itself to effect, any dissolution, liquidation or winding up of the Corporation;

(iii) amend or delete any provision of, or add any provision to, the Corporation's Certificate of Incorporation or By-Laws;



(iv) incur any indebtedness for borrowed money after the original issuance date of the Series D Preferred Stock that exceeds \$250,000 in the aggregate;

(v) make (or permit any corporation, a majority of the voting stock of which is owned or controlled by the Corporation to make) any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity (except transactions or ownership approved by a majority of the Board of Directors of the Corporation, which majority shall include the two Preferred Directors) unless it is wholly owned by the Corporation;

(vi) make (or permit any subsidiary to make) any loan or advance to any person, including, without limitation, any employee or director of the Corporation or any subsidiary, except (A) advances and similar expenditures in the ordinary course of business, (B) under the terms of an employee stock or option plan approved by a majority of the Board of Directors of the Corporation, or (C) other transactions approved by a majority of the Board of Directors of the Corporation, which majority shall include the two Preferred Directors;

(vii) guarantee, directly or indirectly, any indebtedness or obligations (except for guarantees approved by a majority of the Board of Directors of the Corporation, which majority shall include the two Preferred Directors);

(viii) acquire all or substantially all of the properties, assets or stock of any other corporation or entity, other than transactions approved by a majority of the Board of Directors of the Corporation, which majority shall include the two Preferred Directors;

(ix) authorize or issue (whether by amendment to the Certificate of Incorporation or by reclassification, merger, consolidation, reorganization or otherwise) any new or existing class or classes or series of capital stock having any preference or priority as to dividends, liquidation preferences or redemption rights superior to or on a parity with any such preference or priority of the Series D Preferred Stock, or authorize or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having rights to purchase, any shares of stock of the Corporation having any preference or priority as to dividends, liquidation preferences or redemption rights superior to or on a parity with any such preference or priority of the Series D Preferred Stock; or

(x) take any action materially affecting the Preferred Stock, including without limitation:

(A) reclassifying any shares of Common Stock of the Corporation;

(B) paying or declaring any dividend or distribution on any shares of its capital stock, or applying any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of its capital stock, except for the repurchase by the Corporation of capital stock held by an employee, director or consultant of the Corporation (i) at cost upon termination of their employment or services with

the Corporation or (ii) pursuant to the terms of the Restricted Stock Agreement dated on or about August 7, 2002, with its founder stockholder and certain purchasers of the Series A Preferred Stock;

(C) increasing or decreasing the size of the Corporation's Board of Directors unless such increase or decrease is approved by a majority of the Board of Directors, which majority shall include the two Preferred Directors.

4. Optional Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert.

(i) *Series A Preferred Stock.* Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.00 by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" shall initially be \$1.00. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(ii) *Series B Preferred Stock.* Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.25 by the Series B Conversion Price (as defined below) in effect at the time of conversion. The "Series B Conversion Price" shall initially be \$1.25. Such initial Series B Conversion Price, and the rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(iii) *Series C Preferred Stock.* Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.70 by the Series C Conversion Price (as defined below) in effect at the time of conversion. The "Series C Conversion Price" shall initially be \$1.70. Such initial Series C Conversion Price, and the rate at which shares of Series C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(iv) *Series D Preferred Stock.* Each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$1.70 by the Series D Conversion Price (as defined below) in effect at the time of conversion. The "Series D Conversion Price" shall initially be \$1.70. Such initial Series D Conversion Price, and the rate at

which shares of Series D Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. Each of the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and the Series D Conversion Price is hereinafter sometimes generally referred to as a "Conversion Price."

(v) In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 6 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the full day preceding the date fixed for redemption, unless the redemption price is not paid when due, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the second full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

(b) Fractional Shares. 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 shall pay cash equal to such fraction multiplied by the then effective Conversion Price of the Preferred Stock.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"). The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action which would cause an adjustment reducing the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price or the Series D Conversion Price below the then par value of the shares of Common Stock

issuable upon conversion of such Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to any Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 4(d), the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "Original Issue Date" shall mean the date on which a share of Series D Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date other than:

(1) shares of Common Stock issued or issuable upon conversion of any Convertible Securities or exercise of any Options outstanding on the Original Issue Date;

(2) shares of Common Stock issued or issuable as a dividend or distribution on the Preferred Stock;

(3) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 4(e) or 4(f) below; or

(4) up to 5,099,000 shares of Common Stock issued or issuable upon the exercise of outstanding Options to employees or directors of, or consultants to, the Corporation pursuant to the Corporation's 2002 Equity Incentive Plan or similar plans or arrangements approved by a majority of the Board of Directors (which majority must include the two Preferred Directors) of the Corporation, or any increased number of shares of Common Stock authorized by a majority of the Board of Directors (which majority must include the two Preferred Directors).

(5) shares of Common Stock issued or issuable to financial institutions or lessors in connection with commercial credit agreements, equipment financings or similar transactions; provided that such transaction, and the issuance of shares in connection therewith, has been approved by a majority of the Board of Directors (which majority must include the two Preferred Directors) of the Corporation; or

(6) shares of Common Stock issued or issuable in connection with (A) strategic transactions involving the Corporation and other entities, including (i) joint ventures, and manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements, or (B) acquisitions by the Corporation; provided that such strategic transactions or acquisitions, and the issuance of shares in connection therewith, has been approved by a majority of the Board of Directors (which majority must include the two Preferred Directors) of the Corporation.

(ii) No Adjustment of Conversion Price. No adjustment in the number of shares of Common Stock into which the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock is convertible shall be made, by adjustment in the Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 4(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than such Conversion Price in effect immediately prior to the issue of such Additional Shares, or (b) if prior to such issuance, the Corporation receives written notice from the holders of at least 70% of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as applicable, agreeing that no such adjustment shall be made as the result of the issuance of such Additional Shares of Common Stock.

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

If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options (excluding Options covered by Subsection 4(d)(i)(D)(1) and (4) above) or Convertible Securities (excluding Convertible Securities covered by Subsection 4(d)(i)(D)(1) above) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Conversion Price in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

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

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

(C) Upon the expiration or termination of any unexercised Option, the affected Conversion Price shall be readjusted to the Conversion Price that would be in effect had such Option never been issued, and the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option shall not be deemed issued for the purposes of any subsequent adjustment of the affected Conversion Price;

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof (but excluding any change resulting from any events resulting in changes under Section 4(e) or 4(f) below), the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B), (C) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends the terms of any such Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date), then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Subsection 4(d)(iii) shall apply.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(A) In the event the Corporation shall, at any time after the Original Issue Date and on or before the earlier of (i) the two year anniversary of the Original Issue Date and (ii) the date of the next financing of the Company in which the Company receives aggregate gross proceeds of more than \$5,000,000, (the earlier of the events described in (i) and (ii) shall be referred to as the "Determination Date"), issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii), but excluding shares issued as a stock split or combination as provided in Section 4(e) or upon a dividend or distribution as provided in Section 4(f)), without consideration or for a consideration per share less than the applicable Series D Conversion Price in effect immediately prior to such issue, then the Series D Conversion Price shall be reduced, concurrently with such issue, to the consideration per share received by the Corporation for such issue or deemed issue of the Additional Shares of Common Stock; provided that if such issuance or deemed issuance was without consideration, then the Corporation shall be deemed to have received an aggregate of \$0.01 of consideration for all such Additional Shares of Common Stock issued or deemed to be issued.

(B) In the event the Corporation shall, with respect to the Prior Preferred at any time after the Original Issue Date, or with respect to the Series D Preferred Stock at any time after the Determination Date, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii), but excluding shares issued as a stock split or combination as provided in Section 4(e) or upon a dividend or distribution as provided in Section 4(f)), without consideration or for a consideration per share less than any Conversion Price in effect immediately prior to such issue, then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue (calculated assuming conversion of all issued and outstanding shares of Preferred Stock as well as all other issued and outstanding Convertible Securities, and the exercise, exchange or conversion of all then outstanding options, warrants or subscription rights) plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of

Common Stock so issued would purchase at such Conversion Price; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (calculated assuming conversion of all issued and outstanding shares of Preferred Stock as well as all other issued and outstanding Convertible Securities, and the exercise, exchange or conversion of all then outstanding options, warrants or subscription rights) plus the number of such Additional Shares of Common Stock so issued; provided that, the number of shares of Common Stock deemed issuable upon exercise or conversion of such outstanding Options and Convertible Securities shall not give effect to any adjustments to the conversion price or conversion rate of such Options or Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

(v) Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

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

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

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(1) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by



(2) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock which are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 120 days, then, upon the final such issuance, each applicable Conversion Price shall be adjusted to give effect to all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, each Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, each Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event each Conversion Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying such Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock actually issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock actually issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution to the holders of Common Stock; provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, such Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have

received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Reclassification, Exchange, or Substitution. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event the holder of each such share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable, upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

(i) Adjustment for Merger or Reorganization, etc. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is covered by Section 2(d)), each share of Preferred Stock shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interest thereafter of the holders of Preferred Stock to the end that the provisions set forth in this

Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(j) Adjustment for Failure to Redeem. In the event that the Corporation shall fail to pay in full any amount due for redemption of shares of Preferred Stock pursuant to Section 6 hereof on the date such redemption amount is due, then each of the Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price and the Series D Conversion Price immediately shall be decreased by ten percent (10%) on such Default Date (as defined in Section 3(b)), and each such Conversion Price thereafter shall be decreased at the rate of ten percent (10%) every ninety (90) days thereafter until such time as such redemption amount is paid in full.

(k) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, 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 4 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 the Preferred Stock against impairment.

(l) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the affected 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 Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price then in effect for the Preferred Stock held by such holder, and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of such Preferred Stock.

(m) Notice of Record Date. In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock or a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall use reasonable efforts to cause to be filed at its principal office or at the office of the transfer agent of the Preferred Stock, and shall cause to be mailed to the holders of the Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the date specified in (A) below or twenty days before the date specified in (B) below, a notice stating:

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, consolidation, merger, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up; provided, however, that the Corporation's failure to provide any notice required under this Section 4(m) after using reasonable efforts shall not be deemed a default, breach or violation of this Section 4(m).

5. Mandatory Conversion.

(a) Upon (i) the closing of the sale of shares of Common Stock, at a price to the public of at least \$3.40 per share (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), in a firm underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$30,000,000 of proceeds (after deducting underwriter discounts and commissions) to the Corporation or (ii) a vote of the holders of at least 70% of the votes attributable to the Preferred Stock, determined on an as-converted basis as provided in Section 3(a) (each a "Mandatory Conversion Date"), (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock that had been designated as Preferred Stock, and all provisions for the Preferred Stock set forth in Sections 1 through 7 hereof, and all references to the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock, shall be deleted and shall be of no further force or effect.

(b) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of

the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption.

(a) The Corporation will, subject to the conditions set forth below, on August 15, 2011 and on each of the first and second anniversaries thereof (each such date being referred to hereinafter as a "Mandatory Redemption Date"), upon receipt not less than 60 nor more than 120 days prior to the applicable Mandatory Redemption Date of written request(s) for redemption from holders of at least 70% of the votes attributable to the shares of the Preferred Stock then outstanding, determined on an as-converted basis as provided in Section 3(a) (an "Initial Redemption Request"), redeem from each holder of shares of Preferred Stock that requests redemption pursuant to the Initial Redemption Request or pursuant to a subsequent election made in accordance with Section 6(b) below (a "Requesting Holder"), at a price equal to (i) in the case of the Series A Preferred Stock, \$1.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series A Preferred Stock) plus any declared but unpaid dividends thereon, (ii) in the case of the Series B Preferred Stock, \$1.25 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series B Preferred Stock) plus any declared but unpaid dividends thereon, (iii) in the

case of the Series C Preferred Stock, \$1.70 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series C Preferred Stock) plus any declared but unpaid dividends thereon and, (iv) in the case of the Series D Preferred Stock, \$1.70 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series D Preferred Stock) plus any declared but unpaid dividends thereon (each such price, a "Mandatory Redemption Price"), the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and/or Series D Preferred Stock requested to be redeemed by each Requesting Holder, but not more than the following respective portions of the number of shares of Preferred Stock held by such Requesting Holder on the applicable Mandatory Redemption Date. The Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock requested to be redeemed shall be redeemed on a pari passu basis.

<u>Mandatory Redemption Date</u>	<u>Portion of Outstanding Shares of Preferred Stock Held on Mandatory Redemption Date to Be Redeemed</u>
August 15, 2011	33 1/3%
August 15, 2012	50%
August 15, 2013	<u>All outstanding shares of Preferred Stock</u>

(b) The Corporation shall provide notice of its receipt of an Initial Redemption Request, specifying the time, manner and place of redemption and Mandatory Redemption Price (a "Redemption Notice"), by first class or registered mail, postage prepaid, to each holder of record of Preferred Stock at the address for such holder last shown on the records of the transfer agent therefor (or the records of the Corporation, if it serves as its own transfer agent), not less than 45 days prior to the Mandatory Redemption Date. Each holder of Preferred Stock (other than a holder who has made the applicable Initial Redemption Request) may elect to become a Requesting Holder on such Mandatory Redemption Date by so indicating in a written notice mailed to the Corporation, by first class or registered mail, postage prepaid, at least 30 days prior to the applicable Mandatory Redemption Date. Except as provided in Section 6(c) below, each Requesting Holder shall surrender to the Corporation on the applicable Mandatory Redemption Date the certificate(s) representing the shares to be redeemed on such date, in the manner and at the place designated in the Redemption Notice. Thereupon, the Mandatory Redemption Price shall be paid to the order of each such Requesting Holder and each certificate surrendered for redemption shall be cancelled.

(c) If the funds of the Corporation legally available for redemption of Preferred Stock on any Mandatory Redemption Date are insufficient to redeem the number of shares of Preferred Stock required under this Section 6 to be redeemed on such date from Requesting Holders, those funds which are legally available will be used to redeem the maximum

possible number of such shares of Preferred Stock to be redeemed, such redemption to be made pro rata among the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock in accordance with the amount owed to the respective holders of such Preferred Stock. At any time thereafter when additional funds of the Corporation become legally available for the redemption of Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares which the Corporation was theretofore obligated to redeem, ratably on the basis set forth in the preceding sentence.

(d) Unless there shall have been a default in payment of the Mandatory Redemption Price, on the Mandatory Redemption Date all rights of the holder of each share redeemed on such date as a stockholder of the Corporation by reason of the ownership of such share will cease, except the right to receive the Mandatory Redemption Price of such share, without interest, upon presentation and surrender of the certificate representing such share, and such share will not from and after such Mandatory Redemption Date be deemed to be outstanding.

(e) Any Preferred Stock redeemed pursuant to this Section 6 will be cancelled and will not under any circumstances be reissued, sold or transferred, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Preferred Stock accordingly.

7. Waiver. Any of the rights of the holders of Preferred Stock set forth herein may be waived by the affirmative vote or written consent of the holders of at least 70% of the votes attributable to the shares of Preferred Stock then outstanding, determined on an as-converted basis as provided in Section 3(a).

## ARTICLE V.

The number of shares of authorized Common Stock may be increased or decreased (but not below the number then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, notwithstanding the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

## ARTICLE VI.

To the maximum extent permitted from time to time under the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, other than those officers, directors or stockholders who are employees of the Corporation. No amendment or repeal of this Article VI shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director, or stockholder becomes aware prior to such amendment or repeal.

## ARTICLE VII.

A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability is determined. No amendment or repeal of this Article VII shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

## ARTICLE VIII.

The Corporation is to have perpetual existence.

## ARTICLE IX.

Elections of directors need not be by written ballot unless the By-Laws so provide.

## ARTICLE X.

In furtherance and not in limitation of the powers conferred by the law of the State of Delaware, the Board of Directors of the Corporation is authorized and empowered to adopt, alter, amend and repeal the By-Laws, subject to the right of the stockholders entitled to vote with respect thereto to alter and repeal By-Laws made by the Board of Directors.

## ARTICLE XI.

The Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was or has agreed to be a director or officer of the Corporation or while a director or officer is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require the Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding or claim initiated by or on behalf of such person or any counterclaim against the Corporation initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification rights arising under any By-Law, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. Any person seeking indemnification under this Article XI shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. Any repeal or modification of the foregoing provisions of this Article XI shall not



adversely affect any right or protection of a director or officer of the Corporation with respect to any acts or omissions of such director or officer occurring prior to such repeal or modification.

#### **ARTICLE XII.**

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

#### **ARTICLE XIII.**

If at any time the Corporation shall have a class of stock registered pursuant to the provisions of the Securities Exchange Act of 1934, for so long as such class is so registered, any action by the stockholders of such class must be taken at an annual or special meeting of stockholders and may not be taken by written consent.

#### **ARTICLE XIV.**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute.

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

IN WITNESS WHEREOF, the undersigned, for the purpose of amending and restating the Certificate of Incorporation of the Corporation pursuant to the General Corporation Law of the State of Delaware, under penalties of perjury does hereby declare and certify that this is the act and deed of the Corporation and accordingly has hereunto executed this Fourth Amended and Restated Certificate of Incorporation on this 16 day of August, 2006.

Azimuth Systems, Inc.

Raymond P. Cronin, Pres.

Name: Raymond Cronin

Title: Chief Executive Officer and President