

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF**

APTSOFT CORPORATION

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

AptSoft Corporation, a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is AptSoft Corporation, and that this corporation was originally incorporated pursuant to the General Corporation Law on June 19, 2002.
2. That this corporation amended and restated its Certificate of Incorporation on June 22, 2004.
3. That the Board of Directors duly adopted resolutions proposing to further amend and restate the Certificate of Incorporation of this corporation, declaring said second amendment and restatement of the Certificate of Incorporation of this corporation (the "Second Amended and Restated Certificate of Incorporation") to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the Second Amended and Restated Certificate of Incorporation is as set forth below.
4. That, by written consent and in accordance with Section 228 of the General Corporation Law, the holders of outstanding stock, having not less than the minimum number of votes that would be necessary to approve the Second Amended and Restated Certificate of Incorporation at a meeting at which all shares entitled to vote thereon were present and voted, approved resolutions setting forth the Second Amended and Restated Certificate of Incorporation of the Corporation.
5. That the Second Amended and Restated Certificate of Incorporation of the Corporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

FIRST: The name of this corporation is AptSoft Corporation (the "Corporation").

SECOND: The address of the registered office of the Corporation 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.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) Thirty Seven Million (37,000,000) shares of Common Stock, \$.001 par value per share ("Common Stock"), and (ii) Forty Million Sixty-Two Thousand Eight Hundred Thirty One (40,062,831) shares of Preferred Stock, \$.001 par value per share ("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. Unless otherwise indicated, references to "Sections" or "Subsections" in this Article refer to sections and subsections of this Article Fourth.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein and as may be designated by resolution of the Board of Directors with respect to any series of Preferred Stock as authorized herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of Common Stock and Preferred Stock of the Corporation, voting together as a single class and without a separate class vote by the Common Stock, representing a majority of the votes represented by all outstanding shares of Common Stock and Preferred Stock of the Corporation, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

1. Issuance and Reissuance.

Preferred Stock may be issued from time to time in one or more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, 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. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued or reinstated as undesignated Preferred Stock, except as otherwise provided by law or by the terms of any series of Preferred Stock.

2. Blank Check Preferred.

Subject to any vote expressly required by the Certificate of Incorporation, 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 issue 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. Without limiting the generality of the foregoing, and subject to the rights of any series of preferred stock then outstanding, 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.

C. SERIES A PREFERRED STOCK, SERIES B PREFERRED STOCK AND SERIES C PREFERRED STOCK

8,000,000 shares of the authorized Preferred Stock of the Corporation are hereby designated Series A Convertible Participating Preferred Stock (the "Series A Preferred Stock") with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

11,650,485 shares of the authorized Preferred Stock of the Corporation are hereby designated Series B Convertible Participating Preferred Stock (the "Series B Preferred Stock") with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

8,761,861 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated Series C Convertible Participating Preferred Stock (the "Series C Preferred Stock") with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

1. Dividends.

(a) The holders of shares of Series C Preferred Stock shall be entitled to receive in preference to the holders of any and all other classes of capital stock of the Corporation, out of funds legally available therefor, cumulative quarterly dividends on the Series C Preferred Stock in cash at the rate per annum of 8.00% on \$0.114131 per share (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series C Preferred Stock, the "**Series C Original Purchase Price**"), from and after the date of the issuance of the Series C Preferred Stock (the "**Series C Preferred Issuance Date**"), subject to proration for partial years on the basis of a 360-day year, compounded annually (the "**Series C Accruing Dividends**"). The Series C Accruing Dividends will accumulate commencing as of the Series C Preferred Issuance Date and shall be cumulative to the extent unpaid, whether or not they have been declared and whether or not the Corporation may legally pay such dividends. The Series C Accruing Dividends shall become due and payable with respect to any shares of Series C Preferred Stock as provided in Sections 2 and 5. Dividends paid in an amount less than the total amount of accrued Series C Dividends at the time shall be allocated pro rata on a share-by-share basis among all shares of Series C Preferred Stock at the time outstanding. So long as any shares of Series C Preferred Stock are outstanding and the Series C Dividends have not been paid in full in cash (a) no dividend whatsoever (other than stock dividends) shall be paid or declared, and no distribution shall be made, on any shares of capital stock of the Corporation (other than the Series C Preferred Stock); and (b) except as provided in Subsection 3(c)(iv), no shares of capital stock of the Corporation shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(b) The holders of shares of Series B Preferred Stock shall be entitled to receive in preference to the holders of any and all other classes of capital stock of the Corporation (other than the Series C Preferred Stock), out of funds legally available therefor, cumulative quarterly dividends on the Series B Preferred Stock in cash at the rate per annum of 8.00% on \$0.515 per share (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series B Preferred Stock, the "**Series B Original Purchase Price**"), from and after the date of the issuance of the Series B Preferred Stock (the "**Series B Preferred Issuance Date**"), subject to proration for partial years on the basis of a 360-day year, compounded annually (the "**Series B Accruing Dividends**"). The Series B Accruing Dividends will accumulate commencing as of the Series B Preferred Issuance Date and shall be cumulative, to the extent unpaid, whether or not they have been declared and whether or not the Corporation may legally pay such dividends. The Series B Accruing Dividends shall become due and payable with respect to any shares of Series B Preferred Stock as provided in Sections 2 and 5. Dividends paid in an amount less than the total amount of accrued Series B Dividends at the time shall be allocated pro rata on a share-by-share basis among all shares of Series B Preferred Stock at the time outstanding. So long as any shares of Series B Preferred Stock are outstanding and the Series B Dividends have not been paid in full in cash (a) no dividend whatsoever (other than stock dividends) shall be paid or declared, and no distribution shall be made, on any shares of capital stock of the Corporation (other than the Series C Preferred Stock); and (b) except as provided in Subsection 3(c)(iv), no shares of capital stock of the Corporation shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(c) The holders of shares of Series A Preferred Stock shall be entitled to receive in preference to the holders of the Common Stock of the Corporation, out of funds legally available therefor, cumulative quarterly dividends on the Series A Preferred Stock in cash at the rate per annum of 8.00% on \$1.00 per share (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series A Preferred Stock, the "**Series A Original Purchase Price**"), from and after the date of issuance of such shares of Series A Preferred Stock (the "**Series A Preferred Issuance Date**"), subject to proration for partial years on the basis of a 360-day year (the "**Series A Accruing Dividends**"). The Series A Dividends will accumulate commencing as of the Series A Preferred Issuance Date, shall be cumulative, to the extent unpaid, whether or not they have been declared and whether or not the Corporation may legally pay such dividends, and shall compound annually from and after June 22, 2004. The Series A Dividends shall become due and payable with respect to any shares of Series A Preferred Stock as provided in Sections 2 and 5. Dividends paid in an amount less than the total amount of accrued Series A Dividends at the time shall be allocated pro rata on a share-by-share basis among all shares of Series A Preferred Stock at the time outstanding. So long as any shares of Series A Preferred Stock are outstanding and the Series A Dividends have not been paid in full in cash (a) no dividend whatsoever (other than stock dividends) shall be paid or declared, and no distribution shall be made, on any shares of Common Stock of the Corporation; and (b) except as provided in Subsection 3(c)(iv), no shares of capital stock of the Corporation shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(d) In addition to the Series C Accruing Dividends, Series B Accruing Dividends and the Series A Accruing Dividends, as the case may be, the holders of Preferred Stock shall be entitled to receive, out of funds legally available therefor, any dividends declared on the Common Stock (treating each share of Preferred Stock as being equal to the number of shares of Common Stock into which each such share Preferred Stock would be converted if it were converted pursuant to the provisions of Section 4 hereof with such number determined as of the record date for the determination of holders of Common Stock entitled to receive such dividend).

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

(a) Preferential Payments to Holders of Series C Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets available for distribution to its stockholders, before any payment shall be made to the holders of Series B Preferred Stock, Series A Preferred Stock or the holders of Common Stock, by reason of their ownership thereof, an amount equal to two (2) times the Series C Original Purchase Price, plus any unpaid Series C Accruing Dividends. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series C Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series C Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Preferential Payments to Holders of Series B Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and after the payment in full of all preferential amounts to be paid to the holders of shares of Series C Preferred Stock, the holders of shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the remaining assets available for distribution to its stockholders, before any payment shall be made to the holders of Series A Preferred Stock and the holders of Common Stock, by reason of their ownership thereof, an amount equal to the Series B Original Purchase Price, plus any unpaid Series B Accruing Dividends. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series B Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series B Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(c) Preferential Payments to Holders of Series A Preferred Stock. After the payment in full of all preferential amounts to be paid to the holders of shares of Series C Preferred Stock and Series B Preferred Stock, if any, the holders of shares of Series A Preferred Stock then outstanding shall receive out of the remaining assets available for distribution, before any payment shall be made to the holders of Common Stock, by reason of their ownership thereof, an amount equal to the Series A Original Purchase Price, plus any unpaid Series A Accruing Dividends. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(d) Distribution of Remaining Assets. After the payment of all preferential amounts required to be paid to the holders of shares of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock, the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation. The aggregate amount which a holder of a share of Series C Preferred Stock is entitled to receive under Subsection 2(a) and 2(d) is hereinafter referred to as the "**Series C Liquidation Amount.**" The aggregate amount which a holder of a share of Series B Preferred Stock is entitled to receive under Subsection 2(b) and 2(d) is hereinafter referred to as the "**Series B Liquidation Amount.**" The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Subsection 2(c) and 2(d) is hereinafter referred to as the "**Series A Liquidation Amount.**"

(e) Deemed Liquidation Events.

(i) The following events shall be deemed to be a liquidation of the Corporation for purposes of this Section 2 (a "**Deemed Liquidation Event**"), unless the holders of at least a majority of the Series C Preferred Stock, Series B Preferred Stock outstanding, acting together as a single class, elect otherwise by written notice given to the Corporation at least 30 days prior to the effective date of any such event:

(A) a merger or consolidation in which the Corporation is a constituent party except any such merger or consolidation involving the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock which represent, immediately following such merger or consolidation at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation (provided that, for the purpose of this Subsection 2(c)(i), all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); (B) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation; and

(C) any purchase of shares of capital stock of the Corporation (either through a negotiated stock purchase or a tender for such shares) by any party or group (within the meaning of Rule 13d-1 of the Securities Exchange Act of 1934, as amended) (other than an existing stockholder of the Corporation), through one, or a series of related transactions, the effect of which is that such party or group beneficially owns at least a majority of the voting power of the Corporation immediately after such purchase.

(ii) The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection 2(e)(i)(A) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2(a), 2(b), 2(c) and 2(d) above.

(iii) If the amount deemed paid or distributed under this Subsection 2(e) is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(A) For securities not subject to investment letters or other similar restrictions on free marketability,

(1) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the thirty-day (30) period ending three (3) days prior to the closing of such transaction;

(2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty-day (30) day period ending three (3) days prior to the closing of such transaction; or

(3) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(B) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of Directors of the Corporation) from the market value as determined pursuant to clause (A) above so as to reflect the approximate fair market value thereof.

3. Voting.

(a) General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Subsection 3(b), 3(c) or 3(d) below, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) Board Elections. The holders of record of the shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect 2 directors of the Corporation (the "**Series B Directors**"), and the holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect 1 director of the Corporation (the "**Series A Director**"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of Directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written

consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3(b).

(c) Class Voting Rights. Except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, the Corporation shall not, either directly or by amendment, merger, consolidation or otherwise:

(i) Series C Preferred Stock Class Voting Rights. Subject to and except as provided in Subsection 3(d) below, at any time when 150,000 shares of Series C Preferred Stock are outstanding (such shares adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series C Preferred Stock), without the written consent or affirmative vote of the holders of at least a majority 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,

(A) liquidate, dissolve or wind-up the business and affairs of the Corporation, or consent to any of the foregoing;

(B) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner adverse to the Series C Preferred Stock;

(C) create any additional class or series of shares of stock unless the same ranks junior to the Series C Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or increase the authorized number of shares of Series C Preferred Stock or increase the authorized number of shares of any additional class or series of shares of stock unless the same ranks junior to the Series C Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or create or authorize any obligation or security convertible into shares of any class or series of stock unless the same ranks junior to the Series C Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(D) purchase or redeem or pay or declare any dividend or make any distribution on, any shares of stock other than the Series C Preferred Stock, Series B Preferred Stock and the Series A Preferred Stock as expressly authorized herein, other than securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof or other than as approved by the Board of Directors (including the approval of each Series B Director);

(E) create, or authorize the creation of, or issue, or authorize the issuance of any debt security in an aggregate amount exceeding \$50,000

other than equipment leases or bank lines of credit including, without limitation, any debt security which by its terms is convertible into or exchangeable for any equity security of the Corporation and any security of the Corporation which is a combination of debt and equity; or

(F) increase or decrease the authorized number of directors constituting the Board of Directors.

(ii) Series B Preferred Stock Class Voting Rights. Subject to and except as provided in Subsection 3(d) below, at any time when 150,000 shares of Series B Preferred Stock are outstanding (such shares adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series B Preferred Stock), without the written consent or affirmative vote of the holders of 67% 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,

(A) liquidate, dissolve or wind-up the business and affairs of the Corporation, or consent to any of the foregoing;

(B) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner adverse to the Series B Preferred Stock;

(C) create any additional class or series of shares of stock unless the same ranks junior to, or if such creation is pursuant to Section 5A, on a parity with, the Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or increase the authorized number of shares of Series B Preferred Stock or increase the authorized number of shares of any additional class or series of shares of stock unless the same ranks junior to, or if such creation is pursuant to Section 5A, on a parity with, the Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or create or authorize any obligation or security convertible into shares of any class or series of stock unless the same ranks junior to, or if such creation is pursuant to Section 5A, on a parity with, the Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(D) purchase or redeem or pay or declare any dividend or make any distribution on, any shares of stock other than the Series C Preferred Stock, Series B Preferred Stock and the Series A Preferred Stock as expressly authorized herein, other than securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof or other than as approved by the Board of Directors (including the approval of each Series B Director);

(E) create, or authorize the creation of, or issue, or authorize the issuance of any debt security in an aggregate amount exceeding \$50,000 other than equipment leases or bank lines of credit including, without limitation, any debt security which by its terms is convertible into or exchangeable for any equity security of the Corporation and any security of the Corporation which is a combination of debt and equity; or

(F) increase or decrease the authorized number of directors constituting the Board of Directors.

(iii) Series A Preferred Stock Class Voting Rights. Subject to and except as provided in Subsection 3(d) below, at any time when 150,000 shares of Series A Preferred Stock are outstanding (such shares adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series A Preferred Stock), without the written consent or affirmative vote of the holders of a majority 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,

(A) liquidate, dissolve or wind-up the business and affairs of the Corporation, or consent to any of the foregoing;

(B) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner adverse to the Series A Preferred Stock;

(C) create any additional class or series of shares of stock unless the same ranks junior to, or if such creation is pursuant to Section 5A, on a parity with, the Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or increase the authorized number of shares of Series A Preferred Stock or increase the authorized number of shares of any additional class or series of shares of stock unless the same ranks junior to, or if such creation is pursuant to Section 5A, on a parity with, the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or create or authorize any obligation or security convertible into shares of any class or series of stock unless the same ranks junior to, or if such creation is pursuant to Section 5A, on a parity with, the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(D) purchase or redeem or pay or declare any dividend or make any distribution on, any shares of Common Stock as expressly authorized herein, other than securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof or other than as approved by the Board of Directors (including the approval of the Series A Director);

(E) create, or authorize the creation of, or issue, or authorize the issuance of any debt security in an aggregate amount exceeding \$100,000 other than equipment leases or bank lines of credit including, without limitation, any debt security which by its terms is convertible into or exchangeable for any equity security of the Corporation and any security of the Corporation which is a combination of debt and equity; or

(F) increase or decrease the authorized number of directors constituting the Board of Directors.

(d) Deemed Liquidation Event. At any time when shares of any Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law, and in addition to any other vote expressly required by law, the Corporation shall not, either directly or by amendment, merger, consolidation or otherwise, enter into or effect any Deemed Liquidation Event without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock, acting together as a single class, given in writing or by vote at a meeting, consenting or voting (as the case may be). For the avoidance of doubt, notwithstanding anything contained in this Certificate of Incorporation to the contrary, there shall be no separate class vote of any individual series or class of capital stock (including no separate class vote of the Series B Preferred Stock and no separate class vote of the Series A Preferred Stock or otherwise) required to effect a Deemed Liquidation Event by the Corporation.

4. Optional Conversion.

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

(a) Right to Convert Preferred Stock.

(i) 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 \$0.114131 by the Series C Conversion Price (as defined below) in effect at the time of conversion. The "Series C Conversion Price" shall initially be equal to the Series C Original Purchase Price. 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.

In the event of a notice of redemption of any shares of Series C 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 last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the

payment of any such amounts distributable on such event to the holders of Series C Preferred Stock.

(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 \$0.515 by the Series B Conversion Price (as defined below) in effect at the time of conversion. The "**Series B Conversion Price**" shall initially be equal to the Series B Original Purchase Price. 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.

In the event of a notice of redemption of any shares of Series B 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 last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series B Preferred Stock.

(iii) 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 equal to the Series A Original Purchase Price. 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.

In the event of a notice of redemption of any shares of Series A 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 last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C 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 fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on

the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), 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 the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. 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, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent of such certificates (or lost certificate affidavit and agreement) and notice (or by the Corporation if the Corporation serves as its own transfer agent) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such office to such holder of Preferred Stock, or to his, her 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; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series C Conversion Price, Series B Conversion Price or the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as the case may be, 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 Series C Conversion Price, Series B Conversion Price or Series A Conversion Price.

(iii) 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 at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive 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 as shares of such series, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to either reduce the authorized number of shares of Preferred Stock accordingly or reinstate such shares as undesignated Preferred Stock.

(iv) Upon any such conversion, no accrued but unpaid Series C Accruing Dividends, Series B Accruing Dividends or Series A Accruing Dividends will be paid or converted, and instead shall be forfeited, and no adjustment to the Series C Conversion Price, Series B Conversion Price or the Series A Conversion Price, as the case may be, shall be made for any declared but unpaid dividends on the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as the case may be, surrendered for conversion or on the Common Stock delivered upon conversion.

(v) The Corporation shall pay any and all issue and other similar 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 the Applicable Conversion Price for Diluting Issuances.

(i) Special Definitions. For purposes of this Section 4, 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) "**Series A Original Issue Date**" shall mean the date on which the first share of Series A Preferred Stock was issued.

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

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

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

(F) "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 Series A Original Issue Date, Series B Original Issue Date or Series C Original Issue Date, as applicable, other than the Exempted Securities.

(G) "Exempted Securities" shall mean the following:

- (I) shares of Common Stock issued or deemed issued upon the issuance of shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock or upon the subsequent conversion of shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock;
- (II) shares of Common Stock issued or deemed issued upon the issuance of shares of New Preferred Stock pursuant to Section 5.A below or upon the subsequent conversion of shares of New Preferred Stock;
- (III) shares of Common Stock issued or deemed issued as a dividend or distribution on Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock;
- (IV) 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 Subsection 4(e) or 4(f) below;
- (V) shares of Common Stock issued or deemed issued to employees, officers or directors of, or consultants to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, including both Series B Directors;
- (VI) shares of Common Stock issued upon the conversion of any existing debenture, warrant, option or other Convertible Security; or
- (VII) shares of Common Stock issued or issuable to banks, equipment lessors or other financial

institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including both Series B Directors.

(ii) No Adjustment of Conversion Price. No adjustment in the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection 4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Conversion Price, in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series C Preferred Stock, at least two-thirds of the then outstanding shares of Series B Preferred Stock or a majority of the then outstanding shares of Series A Preferred Stock, in each case as applicable, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

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

(A) If the Corporation at any time or from time to time shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Subsections 4(d)(i)(G)(I), (II), (III), or (IV)) 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, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but 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.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, pursuant to the terms of Subsection 4(d)(v) or 4(d)(vi), as the case may be, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the

Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, to an amount which exceeds the lower of (i) the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, on the original adjustment date, or (ii) the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Subsections 4(d)(i)(G)(I), (II), (III), or (IV)), the issuance of which did not result in an adjustment to the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, pursuant to the terms of Subsection 4(d)(v) or 4(d)(vi), respectively (either because the consideration per share (determined pursuant to Subsection 4(d)(vii) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, then in effect, or because such Option or Convertible Security was issued before the Series C Original Issue Date, Series B Original Issue Date or Series A Original Issue Date, as applicable), are revised after Series C Original Issue Date, the Series B Original Issue Date or Series A Original Issue Date, as applicable (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4(d)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, pursuant to the terms of Subsection 4(d)(v) or 4(d)(vi), as applicable, the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, shall be readjusted to such Series C

Conversion Price, Series B Conversion Price or Series A Conversion Price as would have obtained had such Option or Convertible Security never been issued.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series C Original Issue Date, Series B Original Issue Date or Series A Original Issue Date, as applicable, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iv)) ~~without consideration~~ or for a consideration per share less than the applicable Series C Conversion Price, Series B Conversion Price or Series A Conversion Price in effect immediately prior to such issue, then the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, shall be reduced, concurrently with such issue, ~~to a price calculated~~ to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

(A) CP_2 shall mean the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, in effect immediately after such issue of Additional Shares of Common Stock

(B) CP_1 shall mean the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, in effect immediately prior to such issue of Additional Shares of Common Stock;

(C) "A" shall mean the number of shares of Common Stock outstanding and deemed outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion of Convertible Securities (including the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable) outstanding immediately prior to such issue);

(D) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(E) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(v) Determination of Consideration. For purposes of this Subsection 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:

- (I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (II) 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 of the Corporation; and
- (III) 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 (I) and (II) above, as determined in good faith by the Board of Directors of the Corporation.

(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

- (I) 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
- (II) 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 that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, pursuant to the terms of Subsection 4(d)(iv) above and such closings occur within a six month period of each other then, upon the final such issuance, the Series C Conversion Price, Series B Conversion Price and Series A Conversion Price, as applicable, shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without additional giving effect to any adjustments as a result of any subsequent 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 Series C Original Issue Date, Series B Original Issue Date or Series A Original Issue Date, as applicable, effect a subdivision of the outstanding Common Stock without a comparable subdivision of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, or combine the outstanding shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock without a comparable combination of the Common Stock, the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, in effect immediately before that subdivision or combination shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series C Original Issue Date, Series B Original Issue Date or Series A Original Issue Date, as applicable, combine the outstanding shares of Common Stock without a comparable combination of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock as applicable, or effect a subdivision of the outstanding shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock as applicable, without a comparable subdivision of the Common Stock, the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, in effect immediately before the combination or subdivision shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection 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 Series C Original Issue Date, Series B Original Issue Date or Series A Original Issue Date, as applicable, 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 on the Common Stock in additional shares of Common Stock, then and in each such event the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, 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 the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, then in effect by a fraction:

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

(2) the denominator of which shall be the total number of shares of Common Stock 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;

provided, however, that 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, the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, shall be recomputed accordingly as of the close of business on such record date and thereafter the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, shall be adjusted pursuant to this subsection 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 Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, 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 Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, 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 Series C Original Issue Date, Series B Original Issue Date or Series A Original Issue Date, as applicable, shall make or issue, or fix a record date for the determination of holders of capital stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section (C)(1) do not apply to such dividend or distribution, then and in each such event the holders of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2(c), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by

Subsections (e), (f) or (g) of this Section 4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and upon written request of a holder of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock furnish to each such holder of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series C Conversion Price, Series B Conversion Price or Series A Conversion Price, as applicable, then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable.

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

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice, unless waived in accordance with Section 7 below. Any notice required by the provisions hereof to be given to a holder of shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock shall be deemed sent to such holder if deposited in the United States mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

5. Mandatory Conversion.

(a) Upon the earlier of (A) the closing of the sale of shares of Common Stock to the public at a price of at least \$2.58 per share (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$20,000,000 of gross proceeds to the Corporation (a "**Qualifying Public Offering**"), (B) a date specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock or (C) such date as there shall be outstanding 1,752,372 or fewer shares of Series C Preferred Stock (as adjusted appropriately for stock splits, stock dividends and the like with respect to the Series C Preferred Stock) (the "**Series C Mandatory Conversion Date**"), (i) all outstanding shares of Series C Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation as shares of such series.

(b) Upon the earlier of (A) a Qualifying Public Offering, (B) a date specified by vote or written consent of the holders of at least 67% of the then outstanding shares of Series B Preferred Stock or (C) such date as there shall be outstanding 2,330,097 or fewer shares of Series B Preferred Stock (as adjusted appropriately for stock splits, stock dividends and the like with respect to the Series B Preferred Stock) (the "**Series B Mandatory Conversion Date**"),

(i) all outstanding shares of Series B Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation as shares of such series.

(c) Upon the earlier of (A) a Qualifying Public Offering or (B) a date specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock or (C) such date as there shall be outstanding 1,600,000 or fewer shares of Series A Preferred Stock (as adjusted appropriately for stock splits, stock dividends and the like with respect to the Series A Preferred Stock) (the "**Series A Mandatory Conversion Date**"), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation as shares of such series.

(d) All holders of record of shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, shall be given written notice of the Series C Mandatory Conversion Date, Series B Mandatory Conversion Date or Series A Mandatory Conversion Date, as applicable, and the place designated for mandatory conversion of all such shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Series C Mandatory Conversion Date, Series B Mandatory Conversion Date or Series A Mandatory Conversion Date, as applicable. Such notice shall be sent by first class or registered mail, postage prepaid, or given by electronic communication in compliance with the provisions of the General Corporation Law, to each record holder of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable. Upon receipt of such notice, each holder of shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, shall surrender his, her 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 Series C Mandatory Conversion Date, Series B Mandatory Conversion Date or Series A Mandatory Conversion Date, as applicable, all outstanding shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, 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 Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, 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, her or its attorney duly authorized in writing. As soon as practicable after the Series C Mandatory Conversion Date, Series B Mandatory Conversion Date or Series A Mandatory Conversion Date, as applicable, and the surrender of the certificate or certificates for Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, the Corporation shall cause to be issued and delivered to such holder, or on his, her 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 Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(e) All certificates evidencing shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Series C Mandatory Conversion Date, Series B Mandatory Conversion Date or Series A Mandatory Conversion Date, as applicable, be deemed to have been retired and cancelled and the shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, 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 Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, may not be reissued as shares of such Series, 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 Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, accordingly.

5.A. Special Mandatory Conversion

(a) ~~In the event that~~ any holder of shares of Series B Preferred Stock does not participate in a Qualified Financing (as defined below) by purchasing in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (provided that the Corporation has given such holder at least ten (10) days written notice of the Qualified Financing), such holder's Pro Rata Amount (as defined below), then effective upon, subject to, and concurrently with, the consummation of the Qualified Financing, all shares of Series B Preferred Stock held by such holder shall automatically, and without any further action on the part of such holder, be converted on a share-for-share basis into shares of a newly created series of Preferred Stock (having such number of shares as the Board of Directors may by resolution fix), which newly created series shall be substantially identical to the terms of the Series B Preferred Stock except that (i) the conversion price of such series shall be fixed at the Series B Conversion Price in effect immediately prior to the consummation of the Qualified Financing and shall not be subject to any further adjustment under Section 4(d)(iv) above, (ii) no additional board representation will be provided to the new series, (iii) the holders of the new series shall vote together with the Series B Preferred Stock on all matters, other than election of directors, and shall not be entitled to a separate class vote on any matters, and (iv) the terms of the new series may vary from the terms of the Series B Preferred Stock to the extent deemed necessary by the Board of Directors to accomplish the intent of this Section (such new series of Preferred Stock, the "New Preferred Stock"), unless participation in such Qualified Financing shall be waived for all holders of Series B Preferred Stock by the Board of Directors (including both of the Series B Directors). The Board of Directors shall take all necessary actions to designate any such series of New Preferred Stock. For purposes of determining the number of shares of Series B Preferred Stock owned by a holder, and for determining the number of Offered Securities a holder of Series B Preferred Stock has purchased in a Qualified Financing, all shares of Series B Preferred Stock held by Affiliates of such holder shall be aggregated with such holder's shares and all Offered Securities purchased by Affiliates of such holder shall be aggregated with the Offered Securities purchased by such holder (provided that no shares or securities shall be

attributed to more than one entity or person within any such group of affiliated entities or persons). Upon such conversion (a "**Special Mandatory Conversion**"), any shares of Series B Preferred Stock so converted shall be cancelled and not subject to reissuance as shares of such Series.

(b) Upon a Special Mandatory Conversion, each holder of shares of Series B Preferred Stock converted pursuant to Section 5A(a) shall surrender his, her 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 New Preferred Stock to which such holder is entitled pursuant to this Section 5A. All rights with respect to the Series B Preferred Stock converted pursuant to Section 5A(a), including the rights, if any, to receive notices and vote (other than as a holder of New Preferred 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 New Preferred Stock into which such Series B Preferred Stock has been converted. 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, her or its attorney duly authorized in writing. As soon as practicable after the Special Mandatory Conversion and the surrender of the certificate or certificates for Series B Preferred Stock so converted, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of shares of New Preferred Stock issuable on such conversion in accordance with the provisions hereof.

(c) All certificates evidencing shares of Series B Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the time of the Special Mandatory Conversion, be deemed to have been retired and cancelled, and the shares of Series B Preferred Stock converted pursuant to Section 5A(a) represented thereby shall, from and after the time of the Special Mandatory Conversion, be deemed to have been converted into New Preferred Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to either reduce the authorized number of shares of Series B Preferred Stock accordingly or reinstate such shares as undesignated Preferred Stock.

(d) For purposes of this Section 5A, the following definitions shall apply:

(i) "**Affiliate**" shall mean, with respect to any holder of shares of Series A Preferred Stock, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, member or employee of such holder and any venture capital fund now or hereafter existing of which the holder is a partner or member which is controlled by or under common control with one or more general partners of such holder or shares the same management company with such holder.

(ii) "**Offered Securities**" shall mean the equity securities of the Corporation set aside by the Board of Directors for purchase by holders of outstanding shares of Series B Preferred Stock in connection with a Qualified Financing, and offered to such holders.

(iii) **"Pro Rata Amount"** shall mean, with respect to any holder of Series B Preferred Stock, the lesser of (a) a number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of Series B Preferred Stock owned by such holder, and the denominator of which is equal to the aggregate number of outstanding shares of Series B Preferred Stock or (b) the maximum number of Offered Securities that such holder is permitted by the Corporation to purchase in such Qualified Financing, after giving effect to any cutbacks or limitations established by the Board of Directors and applied on a pro rata basis to all holders of Series B Preferred Stock.

(iv) **"Qualified Financing"** shall mean any transaction involving the issuance or sale of equity securities of the Corporation after the Effective Date which would result in the reduction of the Series B Conversion Price pursuant to the terms of this Certificate of Incorporation, unless the holders of 67% of the Series B Preferred Stock elect otherwise by written notice given to the Corporation at least 10 days prior to the consummation of the Qualified Financing.

6.

Redemption.

(a) Redemption of Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock. Shares of Series C Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series C Original Purchase Price, plus any Series C Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the **"Series C Redemption Price"**), in three annual installments commencing 60 days after receipt by the Corporation at any time on or after June 30, 2009, from the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, of written notice requesting redemption of all shares of Series C Preferred Stock (the date of each such installment being referred to as a **"Series C Redemption Date"**). Shares of Series B Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series B Original Purchase Price, plus any Series B Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the **"Series B Redemption Price"**), in three annual installments commencing 60 days after receipt by the Corporation at any time on or after June 30, 2009, from the holders of at least 67% of the then outstanding shares of Series B Preferred Stock, of written notice requesting redemption of all shares of Series B Preferred Stock (the date of each such installment being referred to as a **"Series B Redemption Date"**). Shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series A Original Purchase Price, plus any Series A Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the **"Series A Redemption Price"**), in three annual installments commencing 60 days after receipt by the Corporation at any time on or after June 30, 2009, from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all shares of Series A Preferred Stock (the date of each such installment being referred to as a **"Series A Redemption Date"**). On each Series C Redemption Date, Series B Redemption Date or Series A Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series C Preferred Stock, Series B Preferred Stock or Series A

Preferred Stock, as applicable, owned by each holder, that number of outstanding shares of such series of Preferred Stock determined by dividing (i) the total number of shares of such series of Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Series C Redemption Dates, Series B Redemption Dates or Series A Redemption Dates, as applicable (including the Series C Redemption Date, Series B Redemption Date or Series A Redemption Date to which such calculation applies); provided, however, that Excluded Shares (as such term is defined in subsection (b) of this Section 6) shall not be redeemed and shall be excluded from the calculations set forth in this sentence. If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of a series of Preferred Stock subject to a redemption, and of any other class or series of stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(b) Redemption Notice. Written notice of the mandatory redemption (the "**Redemption Notice**") shall be mailed, postage prepaid, to each holder of record of Preferred Stock, at its post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

- (I) the number of shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;
- (II) the Series C Redemption Date, Series B Redemption Date or Series A Redemption Date, as applicable, and the Series C Redemption Price, Series B Redemption Price or Series A Redemption Price, as applicable;
- (III) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 4(a)); and
- (IV) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of such Preferred Stock to be redeemed.

If the Corporation receives, on or prior to the 20th day after the date of delivery of the Redemption Notice to a holder of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, written notice from such holder that such holder elects to be

excluded from the redemption provided in this Section 6, then the shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, as applicable, registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "Excluded Shares".

(c) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of such series of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4 hereof, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the applicable Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of such series of Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of such applicable series of Preferred Stock shall promptly be issued to such holder.

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

(e) Redeemed or Otherwise Acquired Shares. Any shares of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock which are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately canceled and shall not be reissued, sold or transferred as shares of such Series. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock following redemption.

7. Waiver. Any of the rights, powers or preferences of the holders of Series C Preferred Stock set forth herein may be defeased by the affirmative consent or vote of the holders of at least a majority of the shares of Series C Preferred Stock then outstanding. Any of the rights, powers or preferences of the holders of Series B Preferred Stock set forth herein may be defeased by the affirmative consent or vote of the holders of at least 67% of the shares of Series B Preferred Stock then outstanding. Any of the rights, powers or preferences of the holders of Series A Preferred Stock set forth herein may be defeased by the affirmative consent or vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding.

FIFTH: Subject to any additional vote required by this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board

of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by this Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

SEVENTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

EIGHTH: No person who is or was a director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for, and only to the extent of, liability (i) for any breach of the 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 the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. No amendment to or repeal of, or adoption of, any provision of this Certificate of Incorporation inconsistent with, this Section shall adversely affect the rights and protection afforded to a director of the Corporation under this Section for acts or omissions occurring prior to such amendment to or repeal or adoption of an inconsistent provision. If the General Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended General Corporation Law.

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

Any amendment, repeal or modification of the foregoing provisions of this Article Ninth shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or other agent occurring prior to, such amendment, repeal or modification.

TENTH: Subject to any additional vote required by this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ELEVENTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or

acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "**Covered Persons**"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

* * *

6): The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

7): That said Second Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 4th day of August, 2006.

By: 

Name: Frank Chisholm

Title: President and Chief Executive Officer