

**RESTATED CERTIFICATE OF INCORPORATION
OF
AGRAQUEST, INC.**

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

AgraQuest, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "General Corporation Law") having filed its original Certificate of Incorporation on January 24, 1995, does hereby certify as follows:

That the following resolutions amending and restating the Corporation's Restated Certificate of Incorporation were duly adopted by the Corporation's Board of Directors and by the Corporation's stockholders in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

NOW, THEREFORE, BE IT RESOLVED, that the Restated Certificate of Incorporation of the Corporation be amended and restated in its entirety as follows:

ARTICLE I

The name of the Corporation is AgraQuest, Inc.

ARTICLE II

The address, including street, number, city and county, 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, Delaware, 19801. The name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

ARTICLE III

The nature of the business and the purposes to be conducted and promoted by the Corporation shall be to conduct any lawful business, to promote any lawful purpose, and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

(A) Classes of Stock. The Corporation is authorized to issue two classes of shares, to be designated respectively "Common Stock" and "Preferred Stock." The total number of shares of all classes of stock that the Corporation is authorized to issue is two billion one hundred fifty-five million (2,155,000,000) shares, consisting of one billion two hundred eighty-six million (1,286,000,000) shares of Common Stock, with a par value of \$0.001 per share, and eight hundred sixty-nine million (869,000,000) shares of Preferred Stock, with a par value of \$0.001 per share, of which one hundred fifty thousand (150,000) shares shall be designated as Series A Preferred Stock, three million (3,000,000) shares shall be designated as Series B Preferred Stock, three million five hundred seventy-five thousand (3,575,000) shares shall be designated as Series C Preferred Stock, three million twenty-five thousand (3,025,000) shares shall be designated as Series D Preferred Stock, three million two hundred fifty thousand (3,250,000) shares shall be designated as Series E Preferred Stock, three million (3,000,000) shares shall be designated as Series F Preferred Stock, three million (3,000,000) shares shall be designated as Series G Preferred Stock, five hundred fifty million (550,000,000) shares shall be designated as Series H Preferred Stock and three hundred million (300,000,000) shares shall be designated as Series H-1 Preferred Stock. 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 a majority of the stock of the Corporation entitled to vote, voting together in accordance with Section IV(B)(4) hereof.

(B) Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Restated Certificate of Incorporation may be issued from time to time in one or more series. Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in Certificates of Designation filed after the date hereof or this Restated Certificate of Incorporation (collectively, the "Protective Provisions"), the Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. Subject to compliance with applicable Protective Provisions, but notwithstanding any other rights of the Preferred Stock or any series thereof, the designations, powers, preferences and relative, participating, optional and other rights, if any, and the qualifications, limitations or restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred Stock or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors also is authorized to increase or decrease the number of shares of any series, prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A

Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series H-1 Preferred Stock are as set forth below in this Article IV(B).

1. Dividend Provisions.

(a) Dividend Rights. Subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of shares of each series of Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of any assets legally available therefor, dividends in preference to and in an amount no less per share (based on the number of shares of Common Stock into which each applicable series of Preferred Stock is then convertible) than any dividend declared or paid with respect to the Common Stock. Such dividend shall not be cumulative.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (a "Liquidation"), subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of Series H Preferred Stock and Series H-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets (including any cash) of the Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock or Common Stock by reason of their ownership thereof, an amount per each share of Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, equal to the greater of:

(i) an amount equal to the sum of: (A) \$0.0681923615 for each outstanding share of Series H Preferred Stock or Series H-1 Preferred Stock (in either case, the "Original Series H Issue Price"), adjusted to reflect any stock splits, stock dividends, combinations or recapitalizations occurring after the date of this Restated Certificate of Incorporation (each, a "Recapitalization," and collectively, "Recapitalizations"); plus (B) as applicable: (i) for each share of Series H Preferred Stock, an amount equal to 8% of the Original Series H Issue Price (adjusted to reflect subsequent Recapitalizations) per annum, compounded annually from the date of issuance of such share of Series H Preferred Stock through the date of the Liquidation; or (ii) for each share of Series H-1 Preferred Stock, an amount equal to 12% of the Original Series H Issue Price (adjusted to reflect subsequent Recapitalizations) per annum, compounded annually from the date of issuance of such share of Series H-1 Preferred Stock through the date of the Liquidation; plus (C) any declared and unpaid dividends with respect to each share of Series H Preferred Stock or Series H-1 Preferred Stock, as applicable; or

(ii) an amount equal to the product of (A) the total aggregate fair market value of assets (including any cash) to be distributed in the Liquidation (as such fair market value is determined in good faith by the Board of Directors, consistent with Section (B)(2)(e)(ii) below), multiplied by (B) the percentage

ownership of the Corporation's then outstanding shares of Common Stock and Preferred Stock (on an as-converted basis) that is represented by one share of Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, on the date of the Liquidation.

If upon any Liquidation the assets (including any cash) thus distributed among the holders of the Series H Preferred Stock and Series H-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets (including any cash) of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series H Preferred Stock and Series H-1 Preferred Stock in proportion to the preferential amounts each such holder is otherwise entitled to receive.

(b) After the payment or distribution to the holders of Series H Preferred Stock and Series H-1 Preferred Stock of the full preferential amounts described above in Section (B)(2)(a), subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of Series G Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets (including any cash) of the Corporation to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (i) \$5.00 for each outstanding share of Series G Preferred Stock (the "Original Series G Issue Price") (adjusted to reflect subsequent Recapitalizations) plus (ii) an amount equal to 12% of the Original Series G Issue Price (adjusted to reflect subsequent Recapitalizations) per annum, compounded annually from the date of issuance of the relevant share of Series G Preferred Stock through the date of the Liquidation, plus (iii) any declared and unpaid dividends with respect to the Series G Preferred Stock. If upon any Liquidation the assets (including any cash) thus distributed among the holders of the Series G Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets (including any cash) of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series G Preferred Stock in proportion to the preferential amounts each such holder is otherwise entitled to receive.

(c) Subject to the rights of series of Preferred Stock which may from time to time come into existence, after the payment or distribution to the holders of the Series H Preferred Stock and Series H-1 Preferred Stock and the holders of the Series G Preferred Stock of the full preferential amounts described above in Sections (B)(2)(a) and (B)(2)(b), respectively, but prior and in preference to any payment or distribution of any of the assets (including any cash) of the Corporation to the holders of Common Stock by reason of their ownership thereof:

(i) the holders of Series A Preferred Stock shall be entitled to receive an amount per share equal to the sum of \$0.70 for each outstanding share of Series A Preferred Stock (adjusted to reflect subsequent Recapitalizations), plus any declared and unpaid dividends with respect to the Series A Preferred Stock;

(ii) the holders of Series B Preferred Stock shall be entitled to receive an amount per share equal to the sum of \$1.05 for each outstanding share of Series B Preferred Stock (adjusted to reflect subsequent Recapitalizations), plus any declared and unpaid dividends with respect to the Series B Preferred Stock;

(iii) the holders of Series C Preferred Stock shall be entitled to receive an amount per share equal to the sum of (i) \$1.70 for each outstanding share of Series C Preferred Stock (the "Original Series C Issue Price") (adjusted to reflect subsequent Recapitalizations), plus (ii) an amount equal to the sum of (w) 8% of the Original Series C Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from the date of issuance of the relevant share of Series C Preferred Stock through December 31, 2003, (x) 10% of the Original Series C Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2004 through December 31, 2004, (y) 11% of the Original Series C Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2005 through December 31, 2005, and (z) 12% of the Original Series C Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2006 through the date of the Liquidation, plus (iii) any declared and unpaid dividends with respect to the Series C Preferred Stock;

(iv) the holders of Series D Preferred Stock shall be entitled to receive an amount per share equal to the sum of (i) \$2.35 for each outstanding share of Series D Preferred Stock (the "Original Series D Issue Price") (adjusted to reflect subsequent Recapitalizations), plus (ii) an amount equal to the sum of (w) 8% of the Original Series D Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from the date of issuance of the relevant share of Series D Preferred Stock through December 31, 2004, (x) 10% of the Original Series D Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2005 through December 31, 2005, (y) 11% of the Original Series D Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2006 through December 31, 2006, and (z) 12% of the Original Series D Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2007 through the date of the Liquidation, plus (iii) any declared and unpaid dividends with respect to the Series D Preferred Stock;

(v) the holders of Series E Preferred Stock shall be entitled to receive an amount per share equal to the sum of (i) \$3.20 for each outstanding share of Series E Preferred Stock (the "Original Series E Issue Price") (adjusted to reflect subsequent Recapitalizations), plus (ii) an amount equal to the sum of (w) 8% of the Original Series E Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from the date of issuance of the relevant share of Series E Preferred Stock through December 31, 2005, (x) 10% of the Original Series E Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2006 through December 31, 2006, (y) 11% of the Original Series E Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2007 through December 31, 2007, and (z) 12% of the Original Series E Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2008 through the date of the Liquidation, plus (iii) any declared and unpaid dividends with respect to the Series E Preferred Stock; and

(vi) the holders of Series F Preferred Stock shall be entitled to receive an amount per share equal to the sum of (i) \$5.00 for each outstanding share of Series F Preferred Stock (the "Original Series F Issue Price") (adjusted to reflect subsequent Recapitalizations), plus (ii) an amount equal to the sum of (w) 8% of the Original Series F Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from the date of issuance of the relevant share of Series F Preferred Stock through December 31, 2006, (x) 10% of the Original Series F Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2007 through December 31, 2007, (y) 11% of the Original Series F Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2008 through December 31, 2008, and (z) 12% of the Original Series F Issue Price (adjusted to reflect subsequent Recapitalizations) per annum from January 1, 2009 through the date of the Liquidation, plus (iii) any declared and unpaid dividends with respect to the Series F Preferred Stock.

If, after the payment or distribution to the holders of the Series H Preferred Stock and Series H-1 Preferred Stock and the holders of the Series G Preferred Stock of the full preferential amounts described above in Sections (B)(2)(a) and (B)(2) (b), respectively, the assets (including any cash) to be distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be insufficient to permit the payment of the full aforesaid preferential amounts to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, then, subject to the rights of series of Preferred Stock which may from time to time come into existence, the entire assets (including any cash) of the Corporation legally available for distribution (after the payment or distribution to the holders of the Series H Preferred Stock and Series H-1 Preferred Stock and the holders of the Series G Preferred Stock of the full preferential amounts described above in Sections (B)(2)(a) and (B)(2)(b), respectively) shall be distributed ratably among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock in proportion to the preferential amounts each such holder is otherwise entitled to receive as set forth above in this Section (B)(2)(c).

(d) Upon the completion of the distribution required in subparagraphs (a), (b) and (c) of this Section (B)(2) and any other distribution that may be required with respect to series of Preferred Stock that may from time to time come into existence, the remaining assets (including any cash) of the Corporation available for distribution to stockholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each.

(e) (i) For purposes of this Section (B)(2) and Sections (B)(3), (B)(5) and (C)(2), a Liquidation shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation, or similar transaction where the Corporation is the surviving entity, but excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation), or (B) a sale or other disposition of all or substantially all of the assets of the Corporation;

unless, in the case of either (A) or (B), the Corporation's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold greater than 50% of the voting power of the surviving or acquiring entity.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, then its value will be deemed its fair market value as determined in good faith by the Corporation's Board of Directors. Any securities shall be valued as follows:

(A) The value of securities not subject to investment letter 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):

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(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 letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Sections B(2)(e)(ii)(A)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(iii) The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section (B)(2), and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of (A) the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of

all then outstanding shares of Preferred Stock, and (B) so long as not less than 20% of the aggregate shares of Series H Preferred Stock and Series H-1 Preferred Stock previously issued is still outstanding, the holders of at least 66.67% of the then total outstanding shares of Series H Preferred Stock and Series H-1 Preferred Stock, voting together as a single class.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price of each such series by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date that the certificate is surrendered for conversion. The initial Conversion Price per share of each series of Preferred Stock designated as of October 31, 2007 (the “Purchase Date”) shall be as set forth in the table below; provided, however, that the Conversion Price of the Series H Preferred Stock and Series H-1 Preferred Stock shall be subject to adjustment as set forth in Section (B)(3)(e) below; and provided, further, that the respective Conversion Prices for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock (collectively, the “Junior Series of Preferred Stock”) shall be subject to adjustment as set forth in Section (B)(3)(d) below.

<i>Series of Preferred Stock</i>	<i>Conversion Price</i>
Series A Preferred Stock	\$0.7000000000
Series B Preferred Stock	\$0.3510188385
Series C Preferred Stock	\$0.4861087130
Series D Preferred Stock	\$0.5927945877
Series E Preferred Stock	\$0.7301739697
Series F Preferred Stock	\$0.7841694971
Series G Preferred Stock	\$0.1324667794
Series H Preferred Stock	\$0.0681923615
Series H-1 Preferred Stock	\$0.0681923615

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock (at the Conversion Price at the time in effect for such series) immediately upon the earlier of (i) the Corporation’s sale of its Common Stock in either (x) a firm commitment underwritten public offering by the Corporation pursuant to a registration statement under the Securities Act of 1933, as amended, or (y) a public offering by the Corporation on a foreign stock exchange pursuant to the rules and regulations of the applicable foreign jurisdiction, in each case for gross proceeds to the Corporation of not less than \$25,000,000 in the aggregate or (ii) with respect to each individual series of Preferred Stock, the date specified by written

consent or agreement of: (A) in the case of the Series A Preferred Stock, the holders of a majority of the then outstanding shares of Series A Preferred Stock, voting separately as a single class; (B) in the case of the Series B Preferred Stock, the holders of a majority of the then outstanding shares of Series B Preferred Stock, voting separately as a single class; (C) in the case of the Series C Preferred Stock, the holders of a majority of the then outstanding shares of Series C Preferred Stock, voting separately as a single class; (D) in the case of the Series D Preferred Stock, the holders of a majority of the then outstanding shares of Series D Preferred Stock, voting separately as a single class; (E) in the case of the Series E Preferred Stock, the holders of a majority of the then outstanding shares of Series E Preferred Stock, voting separately as a single class; (F) in the case of the Series F Preferred Stock, the holders of a majority of the then outstanding shares of Series F Preferred Stock, voting separately as a single class; (G) in the case of the Series G Preferred Stock, the holders of at least 66.67% of the then outstanding shares of Series G Preferred Stock, voting separately as a single class; and (H) in the case of the Series H Preferred Stock and Series H-1 Preferred Stock, the holders of at least 66.67% of the then total outstanding shares of Series H Preferred Stock and Series H-1 Preferred Stock, voting together as a single class.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such shares of Preferred Stock, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with (x) an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, or (y) a public offering on a foreign stock exchange pursuant to the rules and regulations of the applicable foreign jurisdiction, the conversion may, at the option of any holder tendering any shares of Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to either such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the applicable Preferred Stock shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Junior Series of Preferred Stock. The respective Conversion Prices of the Junior Series of Preferred Stock shall be subject to adjustment from time to time as set forth below in this Section (B)(3)(d); provided, however, that, unlike the Series H Preferred Stock and Series H-1 Preferred

Stock, the Conversion Prices of the Junior Series of Preferred Stock shall not be subject to adjustment based on the Corporation's issuance of Additional Stock (as defined below).

(i) In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the respective Conversion Price of each Junior Series of Preferred Stock shall be appropriately 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 of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(ii) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the respective Conversion Price of each Junior Series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(c) Conversion Price Adjustments of Series H Preferred Stock and Series H-1 Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.

(i) The Conversion Price of the Series H Preferred Stock and Series H-1 Preferred Stock shall be subject to adjustment from time to time as follows:

(A) If the Corporation shall issue, after the Purchase Date, any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price of either the Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, in effect immediately prior to the issuance of such Additional Stock, the Conversion Price of the Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, in effect immediately prior to each such issuance shall forthwith (except as otherwise provided below in this Section (B)(3)(e)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at

such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of such Additional Stock. For the purpose of the above calculation with respect to the Conversion Price of the Series H Preferred Stock or the Series H-1 Preferred Stock, as applicable, the number of shares of Common Stock outstanding immediately prior to such issuance: (I) shall include the number of shares issuable upon conversion of then outstanding shares of Preferred Stock; but (II) shall not include any outstanding warrants, options or other rights for the purchase of shares of Common Stock or other convertible securities, which have not been exercised or converted prior to such issuance.

(B) No adjustment of the Conversion Price for any shares of Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, shall be made in an amount less than one-tenth of one cent (\$0.001) per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in Sections B(3)(e)(ii)(C)(3) and (4), no adjustment of such Conversion Price pursuant to Sections (B)(3)(e)(i) or (ii) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) The following provisions shall apply to any adjustment to the Conversion Price of the Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, pursuant to Section (B)(3)(e)(i) above:

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

(B) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(C) In the case of the issuance (whether before, on or after the Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of Sections B(3)(e)(i), B(3)(e)(ii) and B(3)(e)(iii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights

to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued (and not at the time of exercise of such options or rights), for a consideration equal to the consideration (determined in the manner provided in Sections B(3)(e)(ii)(A) and (B)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (other than consideration consisting of the cancellation of liabilities or obligations evidenced by convertible or exchangeable securities) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections B(3)(e)(ii)(A) and (B)).

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

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

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections

B(3)(e)(iii)(C)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Sections B(3)(e)(iii)(C)(3) or (4).

(D) If Additional Stock, securities convertible into Additional Stock or rights or options to purchase either Additional Stock or such convertible securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, the consideration allocable to such Additional Stock, convertible securities or rights or options shall be computed as the portion of the consideration so received that the Board of Directors reasonably determines in good faith to be allocable to such Additional Stock, convertible securities or rights or options.

(iii) In the event the Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, shall be appropriately 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 of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price of the Series H Preferred Stock or Series H-1 Preferred Stock, as applicable, shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(v) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section (B)(3)(e)(ii)(C)) by the Corporation after the Purchase Date other than:

(A) shares of Common Stock issued pursuant to a transaction described in Section (B)(3)(e)(iii) hereof;

(B) shares of Common Stock issuable or issued:
(1) to directors, consultants, distributors or vendors (if in transactions with primarily non-financing purposes) of the Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board of Directors of the Corporation at any time

when the total number of shares of Common Stock so issuable or issued after the Purchase Date does not exceed two percent (2%) of the Fully-Diluted Capital Stock (as defined below) immediately after the Purchase Date (appropriately adjusted to reflect subsequent Recapitalizations), and such two percent (2%) limit shall be exclusive of any shares issued or issuable upon the exercise of options and warrants outstanding on or before the Purchase Date; (2) upon the grant of options under the Corporation's 2005 Series H Preferred Stock Incentive Plan (as amended, the "Series H Preferred Stock Incentive Plan") or upon the conversion of shares of Series H Preferred Stock issued or issuable (outright or upon exercise of options) under the Series H Preferred Stock Incentive Plan; (3) in connection with a joint venture, strategic alliance, or other licensing transactions with primarily non-financing purposes approved by the Board of Directors; (4) in connection with a merger, acquisition or purchase of assets of a third party in a transaction with primarily non-financing purposes approved by the Board of Directors; and (5) to lenders, their affiliates or third party guarantors or other parties in connection with commercial loan transactions entered into by the Corporation. For purposes of this Restated Certificate of Incorporation, the term "Fully-Diluted Capital Stock" shall include all shares of Common Stock then outstanding and all shares of Common Stock issuable upon: (A) conversion of all shares of Preferred Stock then outstanding; (B) conversion of all other convertible securities then outstanding; and (C) exercise of all then outstanding options, warrants and other securities and rights exercisable for or convertible into, or entitling the holder thereof to receive directly or indirectly, any shares of Common Stock;

(C) shares of Common Stock or Preferred Stock issued or issuable pursuant to the conversion or exercise of securities (including, without limitation, options, warrants and other rights) convertible or exercisable into shares of Common Stock or Preferred Stock, if such convertible or exercisable securities are outstanding on or before the Purchase Date;

(D) shares of Series H-1 Preferred Stock issued pursuant to the Series H-1 Preferred Stock Purchase Agreement, dated as of the Purchase Date, by and among the Corporation and the party signatories thereto, and shares of Common Stock issuable upon conversion thereof; and

(E) shares of Common Stock or Preferred Stock issued or issuable in connection with any transaction where such securities are excepted from the definition "Additional Stock" by the affirmative vote of: (I) for so long as not less than 20% of the aggregate shares of Series H Preferred Stock and Series H-1 Preferred Stock previously issued is still outstanding, at least 66.67% of the then total outstanding shares of Series H Preferred Stock and Series H-1 Preferred Stock, voting together as a single class; or (II) on and after the date on which less than 20% of the aggregate shares of Series H Preferred Stock and Series H-1 Preferred Stock previously issued is still outstanding, at least a majority of the then total outstanding shares of Preferred Stock, voting together as a single class (on an as-converted basis in accordance with Section (B)(4) below).

(f) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section (B)(3)(d)(i) or Section (B)(3)(e)(iii), then, in each such case for the purpose of this Section (B)(3)(f), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(g) Recapitalizations. If at any time or from time to time there shall be a Recapitalization of the Common Stock or a reorganization, merger or consolidation of the Corporation (other than a subdivision, combination or Liquidation provided for elsewhere in Section (B)(2) or this Section (B)(3)), provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of such holder's shares of Preferred Stock, the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such Recapitalization or reorganization, merger or consolidation. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section (B)(3) with respect to the rights of the holders of Preferred Stock after the Recapitalization or reorganization, merger or consolidation to the end that the provisions of this Section (B)(3) (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such holder's shares of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable. This Section (B)(3)(g) shall apply similarly to successive Recapitalizations and reorganizations, mergers and consolidations.

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

(i) No fractional shares shall be issued upon conversion of Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of Preferred Stock pursuant to this Section (B)(3), the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the applicable Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Preferred Stock.

(i) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall send by first class mail return receipt requested, overnight courier, facsimile or e-mail to each holder of Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right; provided, however, that such notice period may be shortened, to the extent allowable by applicable law (but to not less than ten (10) days), upon the written consent of (A) the holders of Preferred Stock that are entitled to such notice rights and that represent at least a majority of the voting power of all then outstanding shares of Preferred Stock, and (B) so long as at least 20% of the total, combined number of shares of Series H Preferred Stock and Series H-1 Preferred Stock issued prior to the date of such consent is still outstanding at the date of such consent, the holders of at least 66.67% of the then total outstanding shares of Series H Preferred Stock and Series H-1 Preferred Stock, voting together as a single class.

(j) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of any shares of Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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 Preferred Stock, in addition to such other remedies as shall be available to the holders of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section (B)(3) to be given to the holders of shares of Preferred Stock shall be deemed given if sent by first class mail return receipt requested, overnight courier, facsimile or e-mail and addressed to each holder of record at his address, facsimile number or e-mail address appearing on the books of the Corporation.

4. Voting Rights. The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could then be converted. Such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock (except to the extent that voting as a separate class or

series is required by law, this Restated Certificate of Incorporation or otherwise), with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after separately aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

5. Protective Provisions.

(a) Subject to the rights of the series of Preferred Stock which may from time to time come into existence, so long as not less than 20% of the aggregate shares of Series H Preferred Stock and Series H-1 Preferred Stock previously issued is still outstanding, the Corporation shall not, directly or indirectly (whether by merger, consolidation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 66.67% of the then total outstanding shares of Series H Preferred Stock and Series H-1 Preferred Stock, voting together as a single class:

(i) increase or decrease the total number of authorized shares of Common Stock or Preferred Stock;

(ii) effect any reclassification or Recapitalization of any Preferred Stock;

(iii) authorize or issue, or obligate itself to issue, any other security, including any security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, either the Series H Preferred Stock or Series H-1 Preferred Stock with respect to voting, redemption, dividends or upon liquidation (including, without limitation, additional shares of Series H Preferred Stock or Series H-1 Preferred Stock, but excluding: (A) debt securities that are issued in the ordinary course of business, and that do not include any equity component either through convertibility or warrant participation; and (B) shares of Series H Preferred Stock that are reserved for issuance under the Series H Preferred Stock Incentive Plan);

(iv) declare or pay dividends or make other distributions on the capital stock of the Corporation;

(v) redeem, repurchase or otherwise acquire any shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock or Preferred Stock from employees, officers, directors, consultants or other persons performing services pursuant to agreements under which the Corporation has the right to repurchase such shares upon the occurrence of certain events, such as the termination of employment or other provision of services to the Corporation;

(vi) effect any (A) Recapitalization, (B) Liquidation, (C) encumbrance of all or substantially all of the Corporation's assets, or (D) transaction or series of related transactions resulting in the sale or other disposition of more than 50% of the voting power or value of the Corporation;

(vii) amend this Restated Certificate of Incorporation (including the filing of any Certificate of Designation relating to any series of Preferred Stock) or the Corporation's Bylaws;

(viii) increase or decrease the authorized number of members of the Corporation's Board of Directors;

(ix) alter or change the rights, preferences or privileges of the shares of Series H Preferred Stock or Series H-1 Preferred Stock (or shares of any other series of Preferred Stock) so as to affect adversely shares of Series H Preferred Stock or Series H-1 Preferred Stock;

(x) incur after the Purchase Date any new indebtedness for money borrowed in the amount of more than \$200,000 individually or more than \$500,000 in the aggregate;

(xi) effectuate any transaction in which the Corporation grants an exclusive license to any of its intellectual property;

(xii) effectuate any acquisition by the Corporation of another company (however structured, whether as a merger, sale of assets, sale of stock or otherwise) that involves an amount payable by the Corporation in excess of \$500,000;

(xiii) authorize or issue, or obligate itself to issue, any securities in connection with any joint venture, strategic alliance or other licensing transaction; or

(xiv) adopt any new stock option plan or other equity incentive plan or increase the shares authorized for issuance under any existing stock option plan or other equity incentive plan.

(b) Subject to the rights of the series of Preferred Stock which may from time to time come into existence, so long as not less than fifty percent (50%) of the aggregate shares of Series G Preferred Stock previously issued is still outstanding, the Corporation shall not, directly or indirectly (whether by merger, consolidation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series G Preferred Stock, voting separately as a single class, alter or change the rights, preferences or privileges granted to shares of Series G Preferred Stock above in Section (B)(2)(b) so as to affect adversely such shares of Series G Preferred Stock.

(c) Subject to the rights of the series of Preferred Stock which may from time to time come into existence, the Corporation shall not, directly or indirectly (whether by merger, consolidation or otherwise), alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock so as to affect adversely shares of any such series, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of each affected series, each voting separately as a single class; provided, however, that, to the extent permitted by the General Corporation Law and except for the approvals required above in Section (B)(5)(a) and (b), any such alteration or change that is made on a consistent basis to the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock (except for any reduction in the respective liquidation preferences and/or rates of accrual set forth above in Section (B)(2)(c)) shall require only the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock, voting together as a single class (on an as-converted basis in accordance with Section (B)(4) above); and provided, further, that, to the extent permitted by the General Corporation Law and except for the approvals required above in Section (B)(5)(a) and (b), any reduction in the respective liquidation preferences and/or rates of accrual set forth above in Section (B)(2)(c) that is made on a pro rata basis among the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall require only the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, voting together as a single class (on an as-converted basis in accordance with Section (B)(4) above).

6. Status of Converted or Reacquired Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section (B)(3) hereof or repurchased, redeemed or otherwise reacquired by the Corporation, the shares so converted or repurchased, redeemed or otherwise reacquired by the Corporation shall be canceled and shall not be issuable in such series by the Corporation. The Restated Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

7. No Impairment. The Corporation will not, by amendment of its Restated Certificate of Incorporation or through any reorganization, Recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in

good faith assist in the carrying out of all the provisions of this Section (B) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion and other rights of the holders of Preferred Stock against impairment.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon a Liquidation, the assets (including any cash) of the Corporation shall be distributed as provided in Section (B)(2) of this Article IV.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law; provided, however, that except as otherwise required by law, the holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Restated Certificate of Incorporation (including any Certificate of Designation relating to any series of Preferred Stock) 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 Restated Certificate of Incorporation (including any Certificate of Designation relating to any series of Preferred Stock) or pursuant to the General Corporation Law.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Whenever a compromise is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of the General Corporation Law or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of the General Corporation Law order a meeting of the creditors, or class of creditors, and/or of the stockholders or class of stockholders of the

Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the same compromise or arrangement and said reorganization shall, if sanctioned by the court to which said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE VII

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation, and regulation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided:

(A) The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The total number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. No election of directors need be by written ballot.

(B) After the original or other Bylaws of the Corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law, and, after the Corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the Bylaws of the Corporation may be exercised by the Board of Directors of the Corporation; provided, however, that any provision for the classification of directors of the Corporation for staggered terms pursuant to the provisions of subsection (d) of Section 141 of the General Corporation Law shall be set forth in an initial Bylaw or in a Bylaw adopted by the stockholders of the Corporation entitled to vote, unless provisions for such classification shall be set forth in this Restated Certificate of Incorporation.

(C) Whenever the Corporation shall be authorized to issue only one class of stock, each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the Corporation shall be authorized to issue more than one class of stock, no outstanding share of any class of stock which is denied voting power under the provisions of this Restated Certificate of Incorporation shall entitle the holder thereof to the right to vote at any meeting of stockholders except as the provisions of paragraph (2) of subsection (b) of Section 242 of the General Corporation Law shall otherwise require; provided, that no share of any such class which is otherwise denied voting power shall entitle the holder thereof to vote upon the increase or decrease in the number of authorized shares of said class.

ARTICLE VIII

The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (7) of subsection (b) of Section 102 of the General Corporation Law, as the same may be amended and supplemented. Neither any amendment or repeal of this Article VIII nor the adoption of any provision of this Restated Certificate of Incorporation inconsistent with this Article VIII shall eliminate or reduce the effect of this Article VIII in respect of any matters occurring, or any cause of action, suit or claim accruing or arising, or that, but for this Article VIII, would accrue or arise, prior to such amendment, repeal or adoption of such inconsistent provision.

ARTICLE IX

The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the General Corporation Law, as the same may be amended and supplemented, have the power to indemnify any and all persons from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section.

ARTICLE X

From time to time any of the provisions of this Restated Certificate of Incorporation may be amended, altered, or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Restated Certificate of Incorporation are granted subject to the provisions of this Article X and the protective provisions of Section (B)(5) of Article IV herein.

RESOLVED FURTHER, that the foregoing Restated Certificate of Incorporation is hereby approved and adopted.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, AgraQuest, Inc. has caused this Restated Certificate of Incorporation to be signed by a duly authorized officer this 31st day of October, 2007.

AGRAQUEST, INC.

By: /s/ Derek Fairchild-Coppoletti
Derek Fairchild-Coppoletti
Executive Vice President, Corporate
Development, Chief Financial
Officer and Secretary