

SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
AETHON, INC.

Aldo Zini hereby certifies that:

**ONE:** The date of filing of the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was June 2, 2004.

**TWO:** He is the duly elected and acting President and Chief Executive Officer of Aethon, Inc., a Delaware corporation.

**THREE:** The Certificate of Incorporation of this company is hereby amended and restated in its entirety to read as follows:

**ARTICLE ONE**

The name of the corporation is Aethon, Inc. (the "Company").

**ARTICLE TWO**

The address of its registered office 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 its registered agent at such address is The Corporation Trust Company.

**ARTICLE THREE**

The purpose for which the Company is organized is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the "DGCL").

**ARTICLE FOUR**

A. Authorized Capital Stock. The aggregate number of shares of capital stock which the Company shall have the authority to issue is 136,534,897, consisting, in substantial part, of: (1) 80,000,000 shares of Common Stock, \$0.001 par value per share, of the Company ("Common Stock"); (2) 56,534,897 shares of Preferred Stock, \$0.001 par value per share, of the Company ("Preferred Stock"), consisting of: (a) 2,918,023 shares of Series A Preferred Stock, \$0.001 par value per share, of the Company ("Series A Preferred Stock"); (b) 4,266,919 shares of Series B Preferred Stock, \$0.001 par value per share, of the Company ("Series B Preferred Stock"); (c) 13,040,241 shares of Series C Preferred Stock, \$0.001 par value per share, of the Company ("Series C Preferred Stock"); (d) 17,856,043 shares of Series D Preferred Stock, \$0.001 par value per share, of the Company (the "Series D Preferred Stock") and (e) 18,453,671 shares of Series E Preferred Stock, \$0.001 par value per share, of the Company (the "Series E Preferred Stock"). Shares of the Series B Preferred Stock, and Series C Preferred Stock are sometimes referred to herein as the "Series B and C Stock" or the "Series B or C Stock", as the case may be.

B. Changes in Authorized Capital Stock. Subject to the specific rights, preferences or privileges of any class of stock as set forth herein, the number of authorized shares of any such class or classes may be increased or decreased (but not below the number of shares of such class or classes then outstanding) by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Company (voting together as a single class), irrespective of the provisions of Section 242(b)(2) of the DGCL.

C. Common Stock Provisions.

1. Dividend Rights. The holders of Common Stock are not entitled to receive any fixed or set dividend. The holders of Common Stock shall receive dividends only at such times and in such amounts as may be determined by the Board of Directors of the Company; provided, however, that no such dividend shall be declared or paid unless all accrued and unpaid dividends on the Preferred Stock are paid and the holders of Preferred Stock receive an additional dividend equal in amount to the dividend per share being paid to the holders of the Common Stock as if each share of Preferred Stock had been converted into Common Stock.

2. Voting Rights. Except as otherwise required by law or expressly provided herein, the holder of each share of Common Stock shall have one vote per share on each matter submitted to a vote of the stockholders of the Company.

3. Liquidation Rights. The rights of any holder of Common Stock in the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, shall be as set forth in Section D.4 below.

4. Redemption. The Common Stock is not redeemable at the option of the holder.

D. Preferred Stock Provisions.

1. Relative Ranking. With respect to the payment of dividends prior to liquidation, dissolution or winding up, and otherwise as specified herein, shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall rank *pari passu* (i.e., equal with respect to right of payment) and shall rank senior (i.e., priority with respect to right of payment) to shares of Common Stock and any other equity security of the Company (such other equity securities together with Common Stock, the "Junior Stock"). Pursuant to Section D.4 hereof, with respect to the payment upon liquidation, dissolution or winding up of the Company, and otherwise as specified herein, shares of Series E Preferred Stock shall rank senior (prior in liquidation) to shares of Series D Preferred Stock, Shares of Series D Preferred Stock shall rank senior (prior in liquidation) to shares of Series B and C Stock, and shares of Series B and C Stock shall rank senior (prior in liquidation) to shares of Series A Preferred Stock and Junior Stock, and Series A Preferred Stock shall rank senior (prior in liquidation) to shares of Junior Stock.

2. Dividend Rights.

(a) Subject to and in accordance with Section D.1, the holders of Preferred Stock, in preference to the holders of Junior Stock, shall be entitled to receive, but only out of funds that are legally available therefor, cash dividends (or at the option of the holder, additional shares of Preferred Stock of the applicable series held by such holder, the fair market value of which shall be determined by the Board of Directors in accordance with Subsection D.8(b)) at the rate of four percent (4%) of the

applicable Original Issue Price (as defined below) per annum (the "Preferred Dividend") on each outstanding share of Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Preferred Dividend in respect of each series of Preferred Stock shall in any event accrue from the original date of the issuance of each such Preferred Stock, whether or not earned or declared, and shall be cumulative and compound at an annual rate (based on a 360 day year). The "Original Issue Price" shall be: (i) \$0.61 per share for Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares); (ii) \$0.71 per share for Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares); (iii) \$0.5368 per share for Series C Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares); (iv) \$0.6298232 per share for Series D Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) and (v) \$0.7670651 per share for Series E Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). Subject to Section D.4 hereof, the Preferred Dividend shall be payable to the holders of the Preferred Stock, in preference to and before any distribution or payment shall be made to the holders of any Junior Stock upon the occurrence of any of the following events: (A) with respect to payment of the Preferred Dividend to the Series E Preferred Stock, the Series D Preferred Stock and the Series B and C Stock only, upon redemption of the respective series of Preferred Stock in accordance with Section D.8, (B) upon a Qualified Public Offering (as defined in Section 6(c)(ii) hereof) or any other public offering of the Company's securities, (C) upon a Change in Control, or (D) upon a liquidation, dissolution or winding up of the Company pursuant to Section D.4.

(b) So long as any shares of Preferred Stock are outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, with respect to any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section D.2(a) above) with respect to the Preferred Stock shall have been paid or declared and set apart. In the event dividends are paid on any share of Junior Stock, an additional dividend shall be paid with respect to all outstanding shares of Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Junior Stock. The provisions of this Section D.2(b) shall not, however, apply to the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock (provided such exchange constitutes an equal exchange, determined on an as converted to Common Stock basis).

3. Voting Rights. Except as otherwise provided herein or as required by law, the Preferred Stock shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Preferred Stock shall be entitled to such number of votes as shall be equal to the number of shares of Common Stock (including fractional shares) into which such holder's aggregate number of shares of Preferred Stock are convertible (pursuant to Section D.6 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

4. Liquidation Rights.

(a) Series E Preferred Stock Liquidation Preference. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of Series E

Preferred Stock shall be entitled, before any distribution or payment is made with respect to any shares of Series D Preferred Stock, Series B and C Stock, Series A Preferred Stock or Junior Stock:

(i) to be paid an amount equal to the Original Issue Price per share of the Series E Preferred Stock (as adjusted for any stock dividends authorized to be paid hereunder, splits, recapitalizations and the like with respect to such shares, and without any adjustment related to the Conversion Price in respect of such Series E Preferred Stock) multiplied by the number of shares of Series E Preferred Stock then outstanding computed to the date payment thereof is made available, plus an amount equal to any and all dividends accrued but unpaid thereon (the "Series E Preferred Stock Liquidation Preference"); or

(ii) immediately prior to such event, to elect to convert their shares of Series E Preferred Stock into Common Stock pursuant to Section D.6.

If upon such liquidation, dissolution or winding up of the Company, whether involuntary or voluntary, the assets to be distributed among the holders of the Series E Preferred Stock shall be insufficient to permit payment to the holders of Series E Preferred Stock of the amount distributable pursuant to Section D.4(a), then the entire assets of the Company to be so distributed shall be distributed ratably among the holders of the Series E Preferred Stock based upon the Series E Preferred Stock Liquidation Preference then owed to such holders.

(b) Series D Preferred Stock Liquidation Preference. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of Series D Preferred Stock shall be entitled, following payment in full of Series E Preferred Stock Liquidation Preference but before any distribution or payment is made with respect to any shares of Series B and C Stock, Series A Preferred Stock or Junior Stock:

(i) to be paid an amount equal to the Original Issue Price per share of the Series D Preferred Stock (as adjusted for any stock dividends authorized to be paid hereunder, splits, recapitalizations and the like with respect to such shares, and without any adjustment related to the Conversion Price in respect of such Series D Preferred Stock) multiplied by the number of shares of Series D Preferred Stock then outstanding computed to the date payment thereof is made available, plus an amount equal to any and all dividends accrued but unpaid thereon (the "Series D Preferred Stock Liquidation Preference"); or

(ii) immediately prior to such event, to elect to convert their shares of Series D Preferred Stock into Common Stock pursuant to Section D.6.

If upon such liquidation, dissolution or winding up of the Company, whether involuntary or voluntary, after full payment of the Series E Preferred Stock Liquidation Preference as set forth in Section D.4(a), the assets to be distributed among the holders of the Series D Preferred Stock shall be insufficient to permit payment to the holders of Series D Preferred Stock of the amount distributable pursuant to Section D.4(b), then the entire assets of the Company to be so distributed shall be distributed ratably among the holders of the Series D Preferred Stock based upon the Series D Preferred Stock Liquidation Preference then owed to such holders.

(c) Series B and C Liquidation Preference. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of Series B and C Stock shall be entitled, following payment in full of Series E Preferred Stock Liquidation Preference

and the Series D Preferred Stock Liquidation Preference but before any distribution or payment is made with respect to any shares of Series A Preferred Stock or Junior Stock:

(i) to be paid an amount equal to the Original Issue Price per share of the Series B and Series C Preferred Stock, as applicable (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares, and without any adjustment related to the applicable Conversion Price) multiplied by the number of shares of Series B or C Stock, as the case may be, then outstanding, plus, in the case of each share of Series B and C Stock, an amount equal to any and all dividends accrued but unpaid thereon, computed to the date payment thereof is made available (the "Series B and C Liquidation Preference"); or

(ii) immediately prior to such event, to elect to convert their shares of Series B or C Stock into Common Stock pursuant to Section D.6.

If, upon such liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, after full payment of the Series E Preferred Stock Liquidation Preference and the Series D Preferred Stock Liquidation Preference as set forth in Sections D.4(a) and (b), the assets to be distributed among the holders of the Series B and C Stock, shall be insufficient to permit payment to such holders of the amount distributable pursuant to Section D.4(c), then the entire assets of the Company remaining to be so distributed shall be distributed ratably and on a *pari passu* basis, among the holders of the Series B and C Stock based upon the Series B and C Liquidation Preference then owed to such holders.

(d) Series A Liquidation Preference. After full payment of the Series E Preferred Stock Liquidation Preference, the Series D Preferred Stock Liquidation Preference, and the Series B and C Liquidation Preference, as set forth in Sections D.4(a), (b) and (c), has been made to the holders of the Series E Preferred Stock, the Series D Preferred Stock, and the Series B and C Stock, the holders of Series A Preferred Stock shall be entitled, before any distribution or payment is made upon any shares of Junior Stock:

(i) to be paid an amount equal to the Original Issue Price per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares, and without any adjustment related to the applicable Conversion Price) multiplied by the number of shares of Series A Preferred Stock then outstanding, plus, in the case of each share of Series A Preferred Stock, an amount equal to any and all dividends accrued but unpaid thereon, computed to the date payment thereof is made available (the "Series A Preferred Stock Liquidation Preference", and together with the Series E Preferred Stock Liquidation Preference, the Series D Preferred Stock Liquidation Preference and the Series B and C Liquidation Preference, the "Collective Preferred Liquidation Preference"); or

(ii) immediately prior to such event, to elect to convert their shares of Series A Preferred Stock into Common Stock pursuant to Section D.6.

If after full payment of the Series E Preferred Stock Liquidation Preference, the Series D Preferred Stock Liquidation Preference and Series B and C Liquidation Preference as set forth in Sections D.4(a), (b) and (c), the assets to be distributed among the holders of Series A Preferred Stock shall be insufficient to permit payment to the holders of Series A Preferred Stock of the amount distributable pursuant to Section D.4(d), then the entire remaining assets of the Company to be so distributed shall be distributed ratably among the holders of Series A Preferred Stock based upon the Series A Liquidation Preference then owed to such holders.

(e) After payment of the Collective Preferred Liquidation Preference in full, the remaining assets of the Company shall be distributed to the holders of Preferred Stock and Common Stock ratably as if the Preferred Stock had been converted into Common Stock in accordance with Section D.6; provided, however, that the aggregate amount that the Preferred Stock shall receive in connection with the liquidation, dissolution or winding up of the Company, including the Collective Preferred Liquidation Preference, shall not exceed three times (3x) the Collective Preferred Liquidation Preference.

(f) The Company shall give each holder of record of Series E Preferred Stock, Series D Preferred Stock and Series B and C Preferred Stock written notice of such impending transaction not later than fifteen (15) days prior to the stockholders' meeting called to approve such transaction, or fifteen (15) 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 D.4, and the Company shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than fifteen (15) days after this Company has given the first notice provided for herein or sooner than ten (10) days after the Company has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of 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 such Preferred Stock (voting together as a single class on an as-converted to Common Stock basis and not as a separate series).

(g) The following events shall be considered a liquidation, dissolution or winding up of the Company under this Section D.4:

(i) Any consolidation, exchange or merger of the Company with or into any other corporation or other entity or person (or group of entities or persons), or any other corporate reorganization or transfer of capital stock, in which the stockholders of the Company immediately prior to such consolidation, exchange, merger or reorganization, own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, exchange, merger or reorganization, or any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred, excluding any consolidation or merger elected exclusively to change the domicile of the Company (an "Acquisition"); or

(ii) A sale, lease or license or other disposition of all or substantially all of the assets of the Company in any transaction or series of related transactions (an "Asset Transfer"); or

(iii) The Company is wound up, liquidated or dissolved, whether voluntary or involuntary.

Any event or occurrence that constitutes an Acquisition or Asset Transfer will also be deemed a "Change in Control."

(h) In the event of such a Change in Control, if the consideration received by the Company or its stockholders is other than cash, the value of such non-cash consideration shall be deemed its fair market value as determined in good faith by the Board of Directors as of the date of such Change in Control. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by Subsection D.4(h)(ii) below:

(A) 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 quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(B) 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 (30) day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of at least seventy percent (70%) of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class on an as-converted to Common Stock basis and not as a separate series).

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Subsection D.4(h)(i)(A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors and the holders of at least seventy percent (70%) of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class on an as-converted to Common Stock basis and not as a separate series).

(i) Notwithstanding anything in this Section D.4 to the contrary, if upon any liquidation event described in Section D.4(g), the holders of Preferred Stock would receive a greater aggregate liquidation amount if such holders' converted such holders' shares of Preferred Stock into Common Stock than such holders would be entitled to receive pursuant to Sections D.4(a)-(d) as holders of Preferred Stock, then such holders shall not receive any amounts under such sections as holders of Preferred Stock but shall be treated, for the purposes of determining such holders' rights under such sections only, as though such holders held, in addition to any shares of Common Stock then actually held by such holders, such number of shares of Common Stock that such holders would hold if such holders had then converted such holders' shares of Preferred Stock into Common Stock, effective immediately prior to such liquidation event, at the then applicable Conversion Rate for each series of Preferred Stock. For the avoidance of doubt, however, in no event shall any holders of Preferred Stock be entitled to receive under this Section D.4(i) both the liquidation preference set forth in Sections D.4(a)-(d) and any distribution pursuant to the notional conversion described in this Section D.4(i).

## 5. Restrictions.

(a) So long as at least twenty five percent (25%) of the shares of Series E Preferred Stock, Series D Preferred Stock and Series B and C Stock originally issued, in the aggregate as among all such series, remains outstanding, or at least twenty five percent (25%) of the shares of Series E Preferred Stock originally issued remains outstanding, without the approval of the holders of at least seventy percent (70%) of the shares of Series E Preferred Stock, Series D Preferred Stock and Series B and C Stock, in the aggregate as among all such series, then outstanding, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as if a single class on an as-converted to Common Stock basis and not as separate series, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) Amend, alter or repeal any provisions of this Certificate of Incorporation or the Bylaws of the Company (including pursuant to a merger, consolidation or otherwise);

(ii) Purchase or set aside any sums for the purchase of any shares of capital stock of the Company, except for: (A) the purchase of capital stock of the Company from former employees, directors or consultants to the Company upon termination of their status, if each such purchase is made pursuant to an agreement in a form approved by the Board of Directors; or (B) the making of any redemption of Series E Preferred Stock, Series D Preferred Stock and Series B or C Stock, pursuant to Section D.8;

(iii) Pay any dividend, or redeem or repurchase stock or options to purchase stock of the Company prior to the payment of dividends on or redemption of the Series E Preferred Stock or make any distribution on any shares of Series A Preferred Stock or Junior Stock, except for the Collective Preferred Liquidation Preference;

(iv) Enter into, consent to, or agree to any liquidation, dissolution or winding up of the Company, or any Change in Control, recapitalization or reclassification involving the Company;

(v) Create or authorize the creation of any additional class or series of shares of capital stock or debt securities senior to the Series E Preferred Stock, or increase the authorized number of shares of the Preferred Stock or increase the authorized number of shares of any other class or series of shares of capital stock, or create or authorize any obligation or security convertible into shares of Preferred Stock or into shares of any other class or series of capital stock, whether any such creation, authorization or increase shall be by means of amendment to this Certificate of Incorporation, by an Acquisition, reclassification of capital stock or otherwise;

(vi) Increase or decrease the size of the Board of Directors to a number other than seven (7) directors;

(vii) Adopt, create, materially amend or alter any equity incentive plan (or similar plan or arrangement), increase the number of securities available for options and grants to directors, officers and employees of, or consultants to, the Company in excess of 7,321,921 shares available under the Company's Stock Option Plan (the "SOP");

(viii) Amend or alter any existing employment agreement or compensation package or enter into any new employment agreement or provide any new compensation package in excess of \$75,000 per year, without the prior approval of the Board of Directors;

(ix) Incur any debt with respect to which the Company is the obligor in excess of \$300,000, or materially amend any loan facilities to which the Company is a party;

(x) Authorize, enter into, or agree to transfer, lease, sell, assign or license any material portion of the intellectual property rights of the Company or any subsidiary thereof other than intellectual property rights transferred for fair value on a non-exclusive basis in the ordinary course of business on terms which are approved by the Board of Directors, or remove or intentionally destroy any material portion of the intellectual property rights of the Company or any subsidiary thereof;

(xi) Issue any securities of the Company in a public offering pursuant to a registration statement under the Securities Act of 1933, as amended;



(xii) Materially change the nature of the Company's business or engage in a new line of business other than as disclosed in writing to the holders of Preferred Stock prior to the filing date of this Certificate of Incorporation;

(xiii) Create any new subsidiary of the Company;

(xiv) Acquire or invest in any other business entity or make a related series of acquisitions and investments, in each case, in excess of \$500,000;

(xv) Enter into any transaction with an affiliate of the Company on other than an arm's length basis;

(xvi) Make any unbudgeted capital expenditures in excess of \$100,000 in any fiscal year; or

(xvi) Make any loans (including loans or advances to employees other than in the ordinary course of business in connection with travel advances or salary) to any third party or guaranty the obligations of any third party.

(b) So long as at least twenty-five percent (25%) of the shares of the Series E Preferred Stock originally issued remain outstanding, without the approval of the holders of at least a majority of the shares of Series E Preferred Stock then outstanding, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) create or authorize the creation (by reclassification, merger or otherwise) of any additional class or series of shares of capital stock having rights, preferences or privileges with respect to voting rights, dividends, redemption or payments upon liquidation senior to the Series E Preferred Stock or reclassify any securities into another series or class of capital stock senior to or on parity with the Series E Preferred Stock;

(ii) amend, alter or repeal any provisions of this Certificate of Incorporation or the Bylaws of the Company (including pursuant to a merger, consolidation or otherwise) if such action would amend, alter or repeal any of the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series E Preferred Stock; or

(iii) increase the number of shares of Series E Preferred Stock authorized for issuance pursuant to the Certificate of Incorporation.

(c) So long as at least twenty-five percent (25%) of the shares of the Series D Preferred Stock originally issued remain outstanding, without the approval of the holders of at least a majority of the shares of Series D Preferred Stock then outstanding, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) create or authorize the creation (by reclassification, merger or otherwise) of any additional class or series of shares of capital stock having rights, preferences or privileges with respect to voting rights, dividends, redemption or payments upon liquidation senior to the Series D Preferred Stock or reclassify any securities into another series or class of capital stock senior to or on parity with the Series D Preferred Stock;

(ii) amend, alter or repeal any provisions of this Certificate of Incorporation or the Bylaws of the Company (including pursuant to a merger, consolidation or otherwise) if such action would amend, alter or repeal any of the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series D Preferred Stock; or

(iii) increase the number of shares of Series D Preferred Stock authorized for issuance pursuant to the Certificate of Incorporation.

(d) So long as at least twenty-five percent (25%) of the shares of the Series C Preferred Stock originally issued remain outstanding, without the approval of the holders of at least a majority of the shares of Series C Preferred Stock then outstanding, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) amend, alter or repeal any provisions of this Certificate of Incorporation or the Bylaws of the Company (including pursuant to a merger, consolidation or otherwise) if such action would amend, alter or repeal any of the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series C Preferred Stock; or

(ii) increase the number of shares of Series C Preferred Stock authorized for issuance pursuant to the Certificate of Incorporation.

(e) So long as at least twenty-five percent (25%) of the shares of the Series B Preferred Stock originally issued remain outstanding, without the approval of the holders of at least a majority of the shares of Series B Preferred Stock then outstanding, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) amend, alter or repeal any provisions of this Certificate of Incorporation or the Bylaws of the Company (including pursuant to a merger, consolidation or otherwise) if such action would amend, alter or repeal any of the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series B Preferred Stock; or

(ii) increase the number of shares of Series B Preferred Stock authorized for issuance pursuant to the Certificate of Incorporation.

(f) So long as at least twenty-five percent (25%) of the shares of the Series A Preferred Stock originally issued remain outstanding, without the approval of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) amend, alter or repeal any provisions of this Certificate of Incorporation or the Bylaws of the Company (including pursuant to a merger, consolidation or otherwise) if such action would amend, alter or repeal any of the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series A Preferred Stock; or

(ii) increase the number of shares of Series A Preferred Stock authorized for issuance pursuant to the Certificate of Incorporation.

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

(a) Optional Conversion; Conversion Price. Each share of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Company or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined in accordance with the following:

(i) In the case of the Series A Preferred Stock, by dividing the Original Issue Price for the Series A Preferred Stock by the Series A Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series A Preferred Stock without the payment of additional consideration by the holder thereof shall initially be the Original Issue Price for such share of Series A Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series A Preferred Stock is convertible, as hereinafter provided (the "Series A Conversion Price").

(ii) In the case of the Series B Preferred Stock, by dividing the Original Issue Price for the Series B Preferred Stock by the Series B Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series B Preferred Stock without the payment of additional consideration by the holder thereof shall initially be the Original Issue Price for such share of Series B Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series B Preferred Stock is convertible, as hereinafter provided (the "Series B Conversion Price").

(iii) In the case of the Series C Preferred Stock, by dividing the Original Issue Price for the Series C Preferred Stock by the Series C Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series C Preferred Stock without the payment of additional consideration by the holder thereof shall initially be the Original Issue Price for such share of Series C Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series C Preferred Stock is convertible, as hereinafter provided (the "Series C Conversion Price").

(iv) In the case of the Series D Preferred Stock, by dividing the Original Issue Price for the Series D Preferred Stock by the Series D Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series D Preferred Stock without the payment of additional consideration by the holder thereof shall initially be the Original Issue Price for such share of Series D Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series D Preferred Stock is convertible, as hereinafter provided (the "Series D Conversion Price").

(v) In the case of the Series E Preferred Stock, by dividing the Original Issue Price for the Series E Preferred Stock by the Series E Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series E Preferred Stock without the payment of additional

consideration by the holder thereof shall initially be the Original Issue Price for such share of Series E Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series E Preferred Stock is convertible, as hereinafter provided (the "Series E Conversion Price").

(vi) The Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series D Conversion Price and the Series E Conversion Price, as such Conversion Price applies to each series, shall sometimes be referred to herein as the "Applicable Conversion Price".

The right of conversion with respect to any shares of Preferred Stock which shall have been called for redemption under Section D.8 hereof shall terminate at the close of business on the day fixed for redemption unless the Company shall default in the payment of the redemption price, in which case the right of conversion with respect to such shares shall continue unless and until such redemption price is paid in full.

(b) Mechanics of Optional Conversions. Before any holder of Preferred Stock shall be entitled to convert shares of Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates therefor at the office of the Company or of any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that the holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted and shall state therein the holder's name or the name or names of the holder's nominees in which the holder wishes the certificate or certificates for shares of Common Stock to be issued. On the date of conversion, all rights with respect to the Preferred Stock so converted shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted and cash in an amount equal to all accrued and unpaid dividends on, and any and all other amounts owing with respect to, the shares of Preferred Stock being converted to and including the time of conversion. If so required by the Company, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon the optional conversion of the Preferred Stock, all shares of Preferred Stock being converted by any holder thereof shall be aggregated for the purpose of determining the number of shares of Common Stock to which such holder shall be entitled, and no fractional share of Common Stock shall be issued. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the date of conversion, as reasonably determined by the Board of Directors in good faith. The Company shall, promptly after surrender of the certificate or certificates for conversion, issue and deliver at such office to such holder of Preferred Stock, or to the holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and cash in an amount equal to all dividends declared but unpaid thereon and any and all other amounts owing with respect thereto at such time. Unless otherwise specified by the holder in the written notice of conversion, 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 conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(c) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Applicable Conversion Price then in effect, as the case may be, upon the occurrence of either of the following:

(i) at any time upon the affirmative election of the holders of at least seventy-five percent (75%) of the outstanding shares of Series E Preferred Stock, Series D Preferred Stock and Series B and C Stock (voting together as if a single class on an as-converted to Common Stock basis and not as separate series), or

(ii) immediately upon the closing of the Company's first firm commitment public offering underwritten by an investment banking firm of national reputation pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company at a price equal to or greater than three times (3x) the Original Issue Price for the Series E Preferred Stock (as adjusted as provided herein) with aggregate gross proceeds to the Company of at least \$40 million before expenses ("Qualified Public Offering").

(d) Mechanics of Automatic Conversions. Upon the occurrence of an event specified in Section 6(c), the shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that all holders of shares of Preferred Stock being converted shall be given written notice of the occurrence of the event specified in Section 6(c) triggering such conversion, including the date such event occurred (the "Mandatory Conversion Date"), and the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Preferred Stock being converted are either delivered to the Company or its transfer agent, or the holder notifies the Company or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. On the Mandatory Conversion Date, all rights with respect to the shares of Preferred Stock so converted shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, together with cash in an amount equal to all accrued and unpaid dividends on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of the shares of Preferred Stock, the holders of such shares shall surrender the certificates representing such shares at the office of the Company or of its transfer agent. If so required by the Company, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates there shall be issued and delivered to such holder, or to such holder's nominee or nominees promptly at such office, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of the Preferred Stock, all shares of Preferred Stock being converted by any holder thereof shall be aggregated for the purpose of determining the number of shares of Common Stock to which such holder shall be entitled, and no fractional share of Common Stock shall be issued. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the Mandatory Conversion Date, as reasonably determined by the Board of Directors in good faith.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 6(e), the following definitions shall apply:

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

(B) [Intentionally Omitted]

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

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection D.6(e)(iii), deemed to be issued) by the Company on or after the date of filing of this Amended and Restated Certificate of Incorporation (the "Filing Date"), other than:

(I) shares of Common Stock issued or issuable upon the exercise or conversion of Options or Convertible Securities outstanding as of the Filing Date;

(II) up to 7,321,921 Stock Option Shares of Common Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) reserved for issuance to employees, officers, directors and consultants of the Company upon exercise of options granted or to be granted pursuant to the SOP (net of any stock repurchases or expired or terminated options pursuant to the terms of the SOP), provided that any such grant of options after the Filing Date is approved by the Board of Directors;

(III) up to 70,423 shares of Common Stock reserved for issuance to UPMC/St. Margaret's upon exercise of the UPMC/St. Margaret's warrants (the "UPMC Warrants"); and up to 390,826 shares of Series D Preferred Stock reserved for issuance to Oxford Finance Corporation, Comerica Bank and the Oakleigh B. Thorne Trust upon exercise of warrants (the "Bank Warrants");

(IV) shares of Common Stock issued or issuable as a dividend or distribution on any class or series of Preferred Stock or shares of Preferred Stock issued or issuable as a dividend pursuant to Section D.2 hereof;

(V) shares of Common Stock issued or issuable in connection with the acquisition of the assets or the outstanding capital stock of another corporation or other entity by the Company or the merger of another corporation or other entity into the Company; provided, however, that pursuant to such acquisition the holders of capital stock of the Company immediately prior to such acquisition continue to hold in excess of fifty percent (50%) in voting power of the capital stock of the Company and such acquisition is approved by at least seventy percent (70%) of the directors then serving on the Board of Directors;

(VI) shares of Common Stock issued or issuable in connection with commercial lending or lease transactions, strategic partnership arrangements or real estate leasing transactions approved by at least seventy percent (70%) of the directors then serving on the

Board of Directors; provided that such transactions or arrangements are not intended to serve as equity financings for the Company;

(VII) 1,012,027 shares of Common Stock reserved for issuance in connection with warrants exercisable for shares of Common Stock issued to holders of bridge notes; or

(VIII) shares of Common Stock issued in transactions for which an appropriate adjustment is made to the Conversion Price of each series, as applicable, pursuant to paragraphs (e) (vi), (f), (g) or (h) below.

(ii) No Adjustment of Conversion Price. Except as set forth in Subsection D.6(e)(vi), no adjustment in the number of shares of Common Stock into which any series of Preferred Stock is convertible shall be made, by adjustment to the applicable Conversion Price for such series in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock (determined pursuant to Subsection D.6(e)(v)) issued or deemed to be issued by the Company is less than the Series E Conversion Price in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock.

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

(A) Options and Convertible Securities. In the event the Company at any time or from time to time on or after the Filing Date shall issue any Options (excluding for all purposes of this Subsection D.6(e)(iii)(A) Options excluded from the definition of Additional Shares of Common Stock in Subsection D.6(e)(i)(D)(II)) or Convertible Securities 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 (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock 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, and the applicable Conversion Price of such series of Preferred Stock shall be adjusted accordingly, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(I) no further adjustment in the Applicable Conversion Price of any such series of Preferred Stock shall be made upon the exercise of such Options or conversion or exchange of the Convertible Securities;

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

(III) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Applicable Conversion Price of any such series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) In the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Company upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange; and

(2) in the case of Options for Convertible Securities only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Company for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Company (determined pursuant to Subsection 6(e)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(IV) no readjustment pursuant to clause (1) or (2) immediately above shall have the effect of increasing the Applicable Conversion Price of any such series of Preferred Stock to an amount which exceeds the lower of (i) the Applicable Conversion Price of any such series of Preferred Stock on the original adjustment date, or (ii) the Applicable Conversion Price of any such series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(V) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Applicable Conversion Price of any such series of Preferred Stock which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Applicable Conversion Price of any such series of Preferred Stock shall be adjusted pursuant to this Subsection 6(e)(iii) as of the actual date of their issuance.

(B) [Intentionally omitted]

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. If and whenever the Company shall issue or sell, or is, in accordance with Subsections D.6(e)(i) through (vi), deemed to have issued or sold, any Additional Shares of Common Stock for a consideration per share less than (A) in the case of the Series E Preferred Stock, the Series E Conversion Price, (B) in the case of the Series D Preferred Stock, the Series D Conversion Price and (C) in the case of the Series C Preferred Stock, Series B Preferred Stock or Series A Preferred Stock, the Series C Conversion Price, in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Applicable Conversion Price of a series of Preferred Stock shall be reduced concurrently with such issue, to a price (calculated to the nearest hundredth of a cent) 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 issue plus the number of shares which the



aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued 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 issue plus the number of such Additional Shares of Common so issued. For the purposes of this Subsection D.6(e)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

Notwithstanding the foregoing, with respect to any adjustment in Applicable Conversion Prices hereunder, in the event that the percentage decrease in the Series A Conversion Price or Series B Conversion Price is greater than the percentage decrease in the Series C Conversion Price, then the Series A Conversion Price or the Series B Conversion Price, as applicable, shall instead be adjusted by an amount equal to the percentage decrease in the Series C Conversion Price.

(v) Determination of Consideration. For purposes of this Subsection D.6(e), the consideration received by the Company for the issue (or deemed 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 amounts of cash received by the Company before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Company for any underwriting, or amounts paid or payable for accrued interest or accrued dividends, or otherwise, in connection with such issuance;

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

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company 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.

(B) Options and Convertible Securities. The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 6(e)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Company 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 Company 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 (y) 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) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(A) Stock Dividends, Distributions or Subdivisions. In the event that at any time after the Filing Date, the Company shall effect the payment of any stock dividend with respect to, stock distribution of or subdivision of the Common Stock, the Applicable Conversion Price of each series of Preferred Stock in effect immediately before such deemed issuance shall, concurrently with the effectiveness of such dividend, distribution or subdivision, be proportionately decreased.

(B) Combinations or Consolidations. In the event that, at any time on or after the Filing Date, the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Applicable Conversion Price of each series of Preferred Stock in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) Adjustments for Certain Dividends and Distributions. In the event that, at any time on or after the Filing Date, the Company shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than in a transaction covered by paragraph (e) (vi) (A) above, then and in each such event provision shall be made so that the holders of each series of Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Company that they would have received had their Preferred Stock been converted into Common Stock immediately prior to such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

(g) Adjustment for Reclassification, Exchange, or Substitution. In the event that at any time or from time to time on or after the Filing Date, the Common Stock issuable upon the conversion of such series of Preferred Stock shall be changed into the same or a different number of shares of any class or series of stock or other securities or property, whether by capital reorganization, reclassification, recapitalization or otherwise (other than in a transaction covered by paragraph (e) (vi) or (f) above, then and in each such event the holder of any shares of such series of Preferred Stock shall have the right thereafter to convert such shares into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, recapitalization or other change by the holder of a number of shares of Common Stock equal to the number of shares of Common Stock into which such shares of such series of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, recapitalization or change, all subject to further adjustment as provided herein.

(h) Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time after the Filing Date, the Company shall merge or consolidate with or into another entity or sell all or substantially all of its assets, and such consolidation, merger or sale is not treated as a liquidation, each share of such series of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Company deliverable upon conversion of such series of Preferred Stock would have been entitled to receive upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the

provisions set forth in this Section D.6 with respect to the rights and interest thereafter of the holders of shares of such series of Preferred Stock, to the end that the provisions set forth in this Section D.6 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of such series of Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price of any series of Preferred Stock pursuant to this Section D.6, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof 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 Company 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 (i) such adjustments and readjustments, (ii) the applicable Conversion Price for each series of Preferred Stock at the time in effect, and (iii) 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 each share of Preferred Stock.

(j) Notices of Record Date. In the event of any taking by the Company of a record of the holders of any class or series 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 Company shall mail to each holder of Preferred Stock at least ten (10) 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.

(k) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of (i) in the case of potential adjustments to the Series E Conversion Price, the holders of at least a majority of the voting power of the outstanding shares of Series E Preferred Stock, (ii) in the case of potential adjustments to the Series D Conversion Price, the holders of at least a majority of the voting power of the outstanding shares of Series D Preferred Stock, (iii) in the case of potential adjustments to the Series C Conversion Price, the holders of at least seventy percent (70%) of the voting power of the outstanding of Series C Preferred Stock, (iv) in the case of potential adjustments to the Series B Conversion Price, the holders of at least a majority of the voting power of the outstanding shares of Series B Preferred Stock, and (v) in the case of potential adjustments to the Series A Conversion Price, the holders of at least a majority of the voting power of the outstanding shares of Series A Preferred Stock, in each case, either before or after the issuance causing such adjustment.

(l) Capital Stock Reserved. The Company shall at all times reserve and keep available, free from pre-emptive rights, out of its authorized but unissued shares of (i) Common Stock, solely for the purpose of effecting the conversion 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 (ii) Preferred Stock, solely for the purpose of effecting the payment of the dividend pursuant to Section D.2 hereof, such number of its shares of Preferred Stock as shall from time to time be sufficient to effect the payment of such dividend; and if at any time the number of authorized but unissued shares of Common Stock or Preferred Stock, as applicable, shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock or the payment of the dividend, as applicable, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Company 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 and Preferred Stock, as applicable, to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation.

(m) Certain Taxes. The Company shall pay any issue or transfer taxes payable in connection with the conversion of Preferred Stock, provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of the Preferred Stock.

(n) Closing of Books. The Company shall at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion or transfer of such Preferred Stock or Common Stock.

(o) Validity of Shares. The Company agrees that it will from time to time take all such actions as may be required to assure that all shares of Common Stock which may be issued upon conversion of any Preferred Stock will, upon issuance, be legally and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof.

(p) Notices. Any notice required or permitted under this Section D.6. to be given to the holders of Preferred Stock shall be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one (1) business day after being delivered by facsimile or electronic mail (with receipt of appropriate confirmation), (iv) one (1) business day after being deposited with an overnight courier services or (v) five (5) days after being deposited in the U.S. mail, First Class with postage prepaid, and addressed to the holder at the address appearing in the books and records of the Company on the date of such notice.

7. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

8. Redemption.

(a) Series E Preferred Stock.

(i) Holders of Series E Preferred Stock Right to Redeem. Upon receipt by the Company, at any time after the fifth anniversary of the first date on which shares of Series E Preferred Stock are first issued, of a written notice (the "Series E Election Notice") requesting redemption of the Series E Preferred Stock from the holders of at least a majority of the shares of Series E Preferred Stock then outstanding, the Company shall redeem all shares of the Series E Preferred Stock then outstanding at a price per share equal to the Series E Preferred Stock Redemption Price (as hereinafter defined), such redemption to occur no later than the date (the "Series E Redemption Date") that is sixty (60) days after receipt of the Series E Election Notice, at the greater of (1) the Original Issue Price of the Series E Preferred Stock plus, in the case of each share, all accrued but unpaid dividends, computed to the Series E Redemption Date, or (2) the Fair Market Value (defined below) of the Series E Preferred Stock computed as of the Series E Redemption Date (the "Series E Redemption Price").

(ii) Series E Redemption Mechanics. Within ten (10) days of the Company's receipt of the Series E Election Notice, written notice (the "Series E Redemption Notice") shall be given by the Company by mail, postage prepaid, or by international courier to non-U.S. residents, to each holder of record (at the close of business on the business day next preceding the day on which the

Redemption Notice is given) of shares of the Series E Preferred Stock, the Series D Preferred Stock and the Series B and C Stock, notifying such holders of the redemption of the Series E Preferred Stock and specifying the number of shares of the Series E Preferred Stock being redeemed, the redemption price, the date of redemption and the place where the redemption price shall be payable. The Series E Redemption Notice shall be addressed to each holder at the address shown by the records of the Company. From and after the close of business on such date of redemption, unless there shall have been a default in the payment of the redemption price, all rights of holders of shares of the Series E Preferred Stock (except the right to receive the redemption price) shall cease with respect to such shares so redeemed, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. The shares of the Series E Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. If the funds of the Company legally available for the payment of the Series E Preferred Stock Redemption Price on any date when payment is due are insufficient to pay the full Series E Preferred Stock Redemption Price, the holders of shares of the Series E Preferred Stock who are owed payment shall share ratably in any funds legally available for payment according to the respective amounts which would be payable to them if payment on such date were made in full. At any time when additional funds of the Company are legally available for payment of the Series E Preferred Stock Redemption Price, such funds will be used to pay the balance of the Series E Preferred Stock Redemption Price then due, or such portion thereof for which funds are then legally available, on the basis set forth above.

(a-1) Series D Preferred Stock.

(i) Holders of Series D Preferred Stock Right to Redeem. Upon receipt by the Company, at any time after the fifth anniversary of the first date on which shares of Series E Preferred Stock are first issued, of a written notice (the "Series D Election Notice") requesting redemption of the Series D Preferred Stock from the holders of at least a majority of the shares of Series D Preferred Stock then outstanding, the Company shall redeem all shares of the Series D Preferred Stock then outstanding at a price per share equal to the Series D Preferred Stock Redemption Price (as hereinafter defined), such redemption to occur no later than the later to occur of the date (A) that is sixty (60) days after receipt of the Series D Election Notice and (B) immediately following the date on which either (I) all shares of Series E Preferred Stock have been redeemed by the Company or (II) the Company has set aside sufficient funds for the purpose of redeeming all shares of Series E Preferred Stock at the Series E Redemption Price (which date is the "Series D Redemption Date"). In no event shall the Company redeem any shares of Series D Preferred Stock prior to redeeming, or setting aside sufficient funds to redeem, all of the outstanding shares of Series E Preferred Stock.

(ii) Series D Redemption Price and Payment. For the purposes of this Subsection D.8(b), the "Series D Redemption Price" shall be the greater of (A) the Original Issue Price of the Series D Preferred Stock plus, in the case of each share, all accrued but unpaid dividends, computed to the Series D Redemption Date, or (B) the Fair Market Value (defined below) of the Series D Preferred Stock computed as of the Series D Redemption Date.

(iii) Series D Redemption Mechanics. Within ten (10) days of the Company's receipt of the Series D Election Notice, written notice (the "Series D Redemption Notice") shall be given by the Company by mail, postage prepaid, or by international courier to non-U.S. residents, to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of the Series E Preferred Stock, the Series D Preferred Stock and the Series B and C Stock, notifying such holders of the redemption of the Series D Preferred Stock and specifying the number of shares of the Series D Preferred Stock being redeemed, the redemption price, the date of redemption and the place where the redemption price shall be payable. The Series D

Redemption Notice shall be addressed to each holder at the address shown by the records of the Company. From and after the close of business on such date of redemption, unless there shall have been a default in the payment of the redemption price, all rights of holders of shares of the Series D Preferred Stock (except the right to receive the redemption price) shall cease with respect to such shares so redeemed, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. The shares of the Series D Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. After (A) all shares of Series E Preferred Stock have been redeemed by the Company or (B) the Company has set aside sufficient funds for the purpose of redeeming all shares of Series E Preferred Stock, if the funds of the Company legally available for the payment of the Series D Preferred Stock Redemption Price on any date when payment is due are insufficient to pay the full Series D Preferred Stock Redemption Price, the holders of shares of the Series D Preferred Stock who are owed payment shall share ratably in any funds legally available for payment according to the respective amounts which would be payable to them if payment on such date were made in full. At any time when additional funds of the Company are legally available for payment of the Series D Preferred Stock Redemption Price, such funds will be used to pay the balance of the Series D Preferred Stock Redemption Price then due, or such portion thereof for which funds are then legally available, on the basis set forth above.

(b) Series B and C Stock.

(i) Holders of Series B and C Stock Right to Redeem.

Upon receipt by the Company, at any time after the fifth anniversary of the first date on which shares of Series E Preferred Stock are first issued, of a written notice (the "Series B and C Election Notice") requesting redemption of the Series B and C Stock from the holders of at least sixty percent (60%) of the shares of Series B and C Stock then outstanding, the Company shall redeem all shares of the Series B and C Stock then outstanding at a price per share equal to the Series B Preferred Stock Redemption Price (as hereinafter defined), in the case of Series B Preferred Stock, and equal to the Series C Preferred Stock Redemption Price (as hereinafter defined), in the case of Series C Preferred Stock, such redemption to occur no later than the later to occur of the date (i) that is sixty (60) days after receipt of the Series B and C Election Notice and (ii) immediately following the date on which either (A) all shares of Series E Preferred Stock and Series D Preferred Stock have been redeemed by the Company or (B) the Company has set aside sufficient funds for the purpose of redeeming all shares of Series E Preferred Stock and Series D Preferred Stock (the "Series B and C Redemption Date"). In no event shall the Company redeem any shares of Series B or C Stock prior to redeeming, or setting aside sufficient funds to redeem, all of the outstanding shares of Series E Preferred Stock and Series D Preferred Stock.

(ii) Series B and C Redemption Price and Payment. For purposes of this Subsection D.8(c), the "Series B Preferred Stock Redemption Price" shall be the greater of (A) the Original Issue Price of the Series B Preferred Stock plus, in the case of each share, all accrued but unpaid dividends, computed to the Redemption Date, or (B) the Fair Market Value (defined below) of the Series B Preferred Stock computed as of the Redemption Date; and the "Series C Preferred Stock Redemption Price" shall be the greater of (A) the Original Issue Price of the Series C Preferred Stock plus, in the case of each share, all accrued but unpaid dividends, computed to the Redemption Date, or (B) the Fair Market Value (defined below) of the Series C Preferred Stock computed as of the Redemption Date.

(iii) Series B and C Redemption Mechanics. Within ten (10) days of the Company's receipt of the Series B and C Election Notice, written notice (the "Series B and C Redemption Notice") shall be given by the Company by mail, postage prepaid, or by international courier to non-U.S. residents, to each holder of record (at the close of business on the business day next preceding

the day on which the Redemption Notice is given) of shares of Series E Preferred Stock, Series D Preferred Stock and Series B and C Stock, notifying such holder of the redemption of the Series B and C Stock and specifying the number of shares Series B and C Stock being redeemed, the redemption price, the date of redemption and the place where the redemption price shall be payable. The Series B and C Redemption Notice shall be addressed to each holder at the address shown by the records of the Company. From and after the close of business on such date of redemption, unless there shall have been a default in the payment of the redemption price, all rights of holders of shares of the Series B and C Stock (except the right to receive the redemption price) shall cease with respect to such shares so redeemed, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. The shares of the Series B and C Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. After (A) all shares of Series E Preferred Stock and Series D Preferred Stock have been redeemed by the Company or (B) the Company has set aside sufficient funds for the purpose of redeeming all shares of Series E Preferred Stock and Series D Preferred Stock, if the funds of the Company legally available for the payment of the Series B Preferred Stock Redemption Price or Series C Preferred Stock Redemption Price on any date when payment is due are insufficient to pay the Series B Preferred Stock Redemption Price or the Series C Preferred Stock Redemption Price, the holders of shares of the Series B and C Stock who are owed payment shall share ratably in any funds legally available for payment according to the respective amounts which would be payable to them if payment on such date were made in full. At any time when additional funds of the Company are legally available for payment of the Series B Preferred Stock Redemption Price and the Series C Preferred Stock Redemption Price, such funds will be used to pay the balance of the Series B Preferred Stock Redemption Price or Series C Preferred Stock Redemption Price then due, or such portion thereof for which funds are then legally available, on the basis set forth above.

(c) Fair Market Value. For the purposes hereof, "Fair Market Value" shall be determined in good faith by the Board of Directors with the approval of the holders of (i) in the case of the Fair Market Value of the Series E Preferred Stock, a majority of the shares of the Series E Preferred Stock then outstanding, (ii) in the case of the Fair Market Value of the Series D Preferred Stock, a majority of the shares of the Series D Preferred Stock then outstanding, and (iii) in the case of the Series B and C Stock, sixty percent (60%) of the shares of Series B and C Stock then outstanding, voting together as a single class; provided, however, that if such determination and approval cannot be obtained within fifteen (15) days following the Series E Redemption Date, the Series D Redemption Date or the Series B and C Redemption Date, as applicable, then the Fair Market Value shall be determined by an independent valuation ("Independent Valuation") assuming the outright sale of 100% of the outstanding securities of the Company to an arm's-length buyer. The Independent Valuation, if necessary, will be performed by an investment bank or appraiser of national reputation selected by the Company and reasonably acceptable to the holders of (i) in the case of the Fair Market Value of the Series E Preferred Stock, a majority of the shares of the Series E Preferred Stock then outstanding, (ii) in the case of the Fair Market Value of the Series D Preferred Stock, a majority of the shares of the Series D Preferred Stock then outstanding, and (iii) in the case of the Series B and C Stock, sixty percent (60%) of the shares of Series B and C Stock then outstanding, voting together as a single class. The Company shall pay the cost of the Independent Valuation(s). The Independent Valuation(s) shall not contain any reductions in the valuation of the Series E Preferred Stock, the Series D Preferred Stock, or the Series B or C Stock, attributable to minority interest or lack of liquidity.

(d) Redemption Default. If the Company fails to make (as applicable) the full Series E Preferred Stock Redemption Price payment, the full Series D Preferred Stock Redemption Price payment, the full Series C Preferred Stock Redemption Price payment or the full Series B Preferred Stock Redemption Price payment as provided herein, then in each case the holders of seventy percent (70%) of the shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock and

Series B Preferred Stock then outstanding, voting together as if a single class (on an as-converted to Common Stock basis), shall have the right to require the Company to undertake a Change in Control transaction, which, if requested by such holders of Series E Preferred Stock, Series D Preferred Stock and Series B and C Stock may be effected through an auction of the Company conducted in a commercially reasonable manner, in consultation with the Company's Chief Executive Officer, in order to attain the highest price per share for holders of the Company's capital stock.

(e) Redeemed or Otherwise Acquired Shares To Be Retired. Any shares of Series E Preferred Stock, Series D Preferred Stock or Series B and C Stock redeemed pursuant to this Section D.8 or otherwise acquired by the Company in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; and the Company may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series E Preferred Stock, Series D Preferred Stock or Series B and C Stock.

(f) Termination of Redemption Right. The rights of redemption under this Section D.8 shall terminate on the closing of a Qualified Public Offering or a Change in Control.

#### E. Election of Directors.

1. Directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Each director shall hold office either until the expiration of the term for which elected or appointed and until a successor has been elected and qualified, or until such director's death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. In the case of any vacancy in the office of a director, such vacancy shall be filled by the vote of the holders of such class or series of stock as elected such director. Any director may be removed without cause by the applicable vote of the holders of shares of such class or series of stock as elected such director.

2. No person entitled to vote at an election for directors may cumulate votes to which such person is entitled.

3. The directors of the Company need not be elected by written ballot unless the Bylaws so provide. The number of directors constituting the Board shall be initially set at seven (7) and shall only be increased or decreased in accordance with the Bylaws (as they may be amended), the Third Amended and Restated Stockholders Agreement (as it may be amended) and the provisions of this Certificate of Incorporation.

4. The holders of at least a majority the outstanding shares of Series D Preferred Stock shall be entitled to elect one (1) director of the Company (the "Series D Director"). The holders of at least a majority of the outstanding shares of Series C Preferred Stock shall be entitled to elect two (2) directors of the Company (the "Series C Directors"). The holders of at least a majority of the outstanding shares of Series B Preferred Stock shall be entitled to elect one (1) director of the Company (the "Series B Director"). The holders of a majority of the outstanding shares of Common Stock and Series A Preferred Stock, voting together as a single class and on an as converted to Common Stock basis, shall be entitled to elect one (1) director of the Company (the "Mutual Director"). The holders of at least a majority of the outstanding shares of Common Stock shall be entitled to elect one (1) director (the "Common Director"). The holders of at least a majority of the outstanding shares of the Series D Preferred Stock, the Series C Preferred Stock and the Series B Preferred Stock, voting together as a single class and on an as converted to Common Stock basis, shall be entitled to elect one (1) director (the "Mutual Preferred Director").



#### **ARTICLE FIVE**

The Company is to have perpetual existence.

#### **ARTICLE SIX**

Except as otherwise provided in this Second Amended and Restated Certificate of Incorporation and in furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Company is expressly authorized to make, alter or repeal the bylaws of the Company.

#### **ARTICLE SEVEN**

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Company may provide. The books of the Company may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Company.

#### **ARTICLE EIGHT**

To the fullest extent permitted by the DGCL as the same exists or may hereafter be amended, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE EIGHT shall not adversely affect any right or protection of a director of the Company existing at the time of such repeal or modification.

The Company shall indemnify its officers, directors, employees and agents to the fullest extent permitted by the DGCL.

Neither any amendment or repeal of this ARTICLE EIGHT, nor the adoption of any provision of this Second Amended and Restated Certificate of Incorporation inconsistent with ARTICLE EIGHT, shall eliminate or reduce the effect of this ARTICLE EIGHT, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE EIGHT, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

#### **ARTICLE NINE**

The Company expressly elects not to be governed by Section 203 of the DGCL.

**FOUR:** This Second Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Company.

**FIVE:** This Second Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the DGCL by the Board of Directors and the stockholders of the Company. More than a majority of the outstanding shares of Common Stock and more than seventy percent (70%) of the outstanding shares of Preferred Stock voting together as if a single class has approved this Second Amended and Restated Certificate of Incorporation by written consent in accordance with Section 228 of the DGCL and prompt written notice of such was given by the Company in accordance with Section 228 to those stockholders who did not approve this Second Amended and Restated Certificate of Incorporation by written consent.

**In Witness Whereof**, Aethon, Inc. has caused this Second Amended and Restated Certificate of Incorporation to be signed by its President this 27th day of August, 2008.

**AETHON, INC.**

By: /s/ Aldo Zini  
Aldo Zini, President and Chief Executive Officer