

BAY MICROSYSTEMS, INC.

**EIGHTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

Bay Microsystems, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Bay Microsystems, Inc. and the original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on July 2, 1998, under the name of Bay Microsystems, Inc.
2. Pursuant to Section 242 and 245 of the General Corporation Law of the State of Delaware, this Eighth Amended and Restated Certificate of Incorporation restates and amends the provisions of this corporation's Seventh Amended and Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on July 20, 2006, as amended by a Certificate of Correction filed with the Secretary of State of the State of Delaware on August 25, 2006.
3. The terms and provisions of this Eighth Amended and Restated Certificate of Incorporation have been duly approved and adopted by vote of the required number of shares of each outstanding class of stock of this corporation pursuant to Section 242 of the General Corporation Law of the State of Delaware.
4. The text of the Seventh Amended and Restated Certificate of Incorporation is hereby restated and further amended to read in its entirety as set forth in Exhibit A attached hereto.

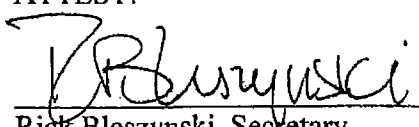
IN WITNESS WHEREOF, this Eighth Amended and Restated Certificate of Incorporation has been signed this 12th day of June, 2007.

BAY MICROSYSTEMS, INC.



Charles F. Gershman, President & CEO

ATTEST:



Rick Bleszynski, Secretary

Exhibit A

**EIGHTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF BAY MICROSYSTEMS, INC.,
a Delaware corporation**

I

The name of this corporation is Bay Microsystems, Inc.

II

The address of the registered office of the corporation in the State of Delaware is 40 E. Division Street, Dover, DE 19901, County of Kent. The name of this corporation's registered agent at such address is Paracorp Incorporated.

III

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

IV

A. Classes of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**." The total number of shares which the corporation is authorized to issue is one hundred sixty-six million ninety-four thousand nine hundred sixty-five (166,094,965) shares, ninety-six million four hundred eighty-one thousand eighty-five (96,481,085) shares of which shall be Common Stock (the "**Common Stock**") and sixty-nine million six hundred thirteen thousand eight hundred eighty (69,613,880) shares of which shall be Preferred Stock (the "**Preferred Stock**"). The Preferred Stock shall have a par value of \$.001 per share and the Common Stock shall have a par value of \$.001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which Series shall consist of four million (4,000,000) shares, on the Series B Preferred Stock, which Series shall consist of three million eight hundred thirty-three thousand nine hundred eighty-nine (3,833,989) shares, on the Series C Preferred Stock, which Series shall consist of thirty-six million four hundred ten thousand five hundred eight (36,410,508) shares, on the Series D Preferred Stock, which Series shall consist of nine million eight hundred fourteen thousand seven hundred sixty-four (9,814,764) shares, on the Series E Preferred Stock, which Series shall consist of fifteen million four hundred fifty-four thousand six hundred nineteen (15,454,619) shares, and on the Series Z Preferred Stock, which Series shall consist of 100,000 shares, are as set forth below in this Article IV(B). The Series A Preferred Stock, Series B Preferred Stock, Series C

Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series Z Preferred Stock are collectively referred to herein as the “Preferred Stock.”

1. Dividend Provisions.

(a) The holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock of this corporation, at the rate of (i) eight cents (\$0.08) per share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) per annum for the holders of shares of Series A Preferred Stock, (ii) thirty-five and six-tenths cents (\$0.356) per share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) per annum for the holders of shares of Series B Preferred Stock, (iii) three and seven tenths cents (\$0.037) per share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) per annum for the holders of shares of Series C Preferred Stock, (iv) five and twelve-hundredths cents (\$0.0512) per share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) per annum for the holders of shares of Series D Preferred Stock, and (v) five and seventy-six-hundredths cents (\$0.0576) per share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) per annum for the holders of shares of Series E Preferred Stock, payable when, as and if declared by the Board of Directors of this corporation (the “Board”). Such dividends shall not be cumulative. No dividend shall be paid on the Common Stock, the Series A Preferred Stock or the Series B Preferred Stock of this corporation at a rate greater than that paid on the Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock. Dividends on the Series D Preferred Stock shall be paid *pari passu* with the Series C Preferred Stock. Dividends on the Series B Preferred Stock shall be paid *pari passu* with the Series A Preferred Stock. Notwithstanding any of the foregoing, no dividend shall be paid on the Common Stock, the Series A Preferred Stock or the Series B Preferred Stock prior to the payment of a dividend on the Series C Preferred Stock or Series D Preferred Stock. Notwithstanding any of the foregoing, no dividend shall be paid on the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, or the Series D Preferred Stock prior to the payment of an equivalent dividend on the Series E Preferred Stock.

(b) In the event that a dividend is declared or paid on the Common Stock, the Series C Preferred Stock, the Series D Preferred Stock, and the Series E Preferred Stock shall be entitled to participate in such dividend ratably on an “as converted” basis.

(c) Except as otherwise provided in Section 2, in the event the corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the corporation or other persons, assets or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock shall be entitled to a proportionate share of any such

distribution as though the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock were the holders of the number of shares of Common Stock of the corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the corporation entitled to receive such distribution.

(d) The holders of shares of the Series Z Preferred Stock shall not be entitled to receive dividends.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of the Series Z Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the corporation to the holders of Common Stock or any series of Preferred Stock of the corporation, by reason of their ownership thereof, an amount per share (the "**Series Z Preference**") equal to a fraction, (x) the numerator of which shall be the difference between fifteen percent (15%) of the aggregate proceeds available for distribution to stockholders of the corporation minus the proceeds distributed to the holders of Common Stock under paragraph 2(d) below; provided, however, that if such difference is a negative number, the numerator shall be zero; and (y) the denominator of which shall be the number of outstanding shares of Series Z Preferred Stock.

(b) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, subject to the rights of the holders of the Series Z Preferred Stock that may arise under paragraph 2(a) above, (i) the holders of Series E Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, or Series D Preferred Stock by reason of their ownership thereof, an amount per share equal to the sum of seventy-two cents (\$0.72) (the "**Original Series E Issue Price**") for each outstanding share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of Series E Preferred Stock and any declared and unpaid dividends with respect to the Series E Preferred Stock.

(c) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, subject to the rights of the holders of the Series Z Preferred Stock that may arise under paragraph 2(a) above and the rights of the holders of the Series E Preferred Stock that may arise under paragraph 2(b) above, the holders of Series C Preferred Stock and Series D Preferred Stock shall be entitled to receive, on a pari passu basis, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock or the holders of the Series A Preferred Stock or Series B Preferred Stock by reason of their ownership thereof, an amount per share equal to (i) with respect to the Series C Preferred Stock, the sum of ninety-four cents (\$0.94) for each outstanding share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of Series C Preferred Stock and any declared and unpaid dividends with respect to the Series C Preferred Stock, and (ii) with respect to the Series D Preferred Stock, the sum of sixty-four cents (\$0.64) (the "**Original Series D Issue Price**") for each outstanding share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of Series D

Preferred Stock and any declared and unpaid dividends with respect to the Series D Preferred Stock. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred Stock and the Series D Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, the entire assets and funds of the corporation legally available for distribution shall be distributed among the holders of the Series C Preferred Stock and the Series D Preferred Stock in proportion to the aggregate preferential amount for each of the Series C Preferred Stock and the Series D Preferred Stock as provided in this paragraph 2(c).

(d) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, subject to the rights of the holders of the Series Z Preferred Stock under paragraph 2(a) above, the rights of the holders of the Series E Preferred Stock that may arise under paragraph 2(b) above, and the rights of the holders of the Series C Preferred Stock and the Series D Preferred Stock that may arise under paragraph 2(c) above, the holders of Series B Preferred Stock and Series A Preferred Stock shall be entitled to receive, on a pari passu basis, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock, an amount per share equal to the sum of (i) one dollar (\$1.00) (the "**Original Series A Issue Price**") for each outstanding share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of Series A Preferred Stock and any declared and unpaid dividends with respect to the Series A Preferred Stock, and (ii) four dollars and forty-five cents (\$4.45) (the "**Original Series B Issue Price**") for each outstanding share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of Series B Preferred Stock and any declared and unpaid dividends with respect to the Series B Preferred Stock. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock and Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of the Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series Z Preferred Stock, the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock and Series A Preferred Stock in proportion to the aggregate preferential amount for each of the Series A Preferred Stock and Series B Preferred Stock as provided in this paragraph 2(d).

(e) Upon the completion of the distribution required in subparagraphs 2(a), (b), (c) and (d) of this Section 2, the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock shall be entitled to share, on a pro rata basis, in all such remaining assets and surplus funds in the same manner as if all shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock have been converted into Common Stock up to such point that the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock by reason of their ownership thereof have received an amount equal to: (i) two dollars (\$2.00) per share in the aggregate (including the payments described in (d) above) (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) for each share of Series A Preferred Stock then held by them plus any declared and unpaid dividends with respect to the Series A Preferred Stock, (ii) eight dollars and ninety cents (\$8.90) per share in the aggregate (including the payments described in (d) above) (as adjusted for any recapitalizations, stock

combinations, stock dividends, stock splits and the like) for each share of Series B Preferred Stock then held by them plus any declared and unpaid dividends with respect to the Series B Preferred Stock, (iii) one dollar and forty-one cents (\$1.41) per share in the aggregate (including the payments described in (c) above) (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) for each share of Series C Preferred Stock then held by them plus any declared and unpaid dividends with respect to the Series C Preferred Stock, and (iv) one dollar and twenty-eight cents (\$1.28) per share in the aggregate (including the payments described in (c) above) (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) for each share of Series D Preferred Stock then held by them plus any declared and unpaid dividends with respect to the Series D Preferred Stock. If, after such distribution, further assets or surplus funds remain in the corporation, holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, and Series D Preferred Stock shall have no further right to participate in the distribution of any such assets or funds, and such further assets or surplus funds shall be distributed to holders of Series E Preferred Stock and Common Stock pro rata based on the number of shares of Series E Preferred Stock and/or Common Stock held by each such holder.

(f) A liquidation, dissolution or winding up of this corporation shall be deemed to be occasioned by, or to include, (1) the sale, lease, exclusive license, exchange, transfer or other disposition of all or substantially all of the corporation's assets, in a single transaction or a series of related transactions (an "Asset Transfer"), (2) any merger, reorganization, consolidation, financing or recapitalization in which the corporation's stockholders of record as constituted immediately prior to such merger, reorganization, consolidation, financing or recapitalization will, immediately after such merger, reorganization, consolidation, financing or recapitalization, hold less than fifty percent (50%) of the voting power of the surviving entity (an "Acquisition"), and (3) the sale or issuance of shares of capital stock of the corporation by the corporation or its stockholders constituting more than fifty percent (50%) of the total outstanding shares of capital stock of the corporation (on a fully-diluted and as-converted basis).

(i) In the event the corporation is a party to an Acquisition or Asset Transfer, as applicable, each holder of Preferred Stock shall be entitled to receive, for each share of Preferred Stock then held of record by such holder, out of the proceeds of such Acquisition or Asset Transfer, the greater of the amount of cash, securities or other property which such holder would be entitled to receive in such Acquisition or Asset Transfer pursuant to (A) Section 2(f)(1) or Section 2(f)(2) above, or (B) the amount of cash, securities or other property which such holder would be entitled to receive in such Acquisition or Asset Transfer with respect to such shares if such shares had been converted to Common Stock immediately prior to such Acquisition or Asset Transfer.

(ii) In any of such events, if the consideration received by the corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange or through the Nasdaq Global Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day (30) period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day (30) period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board, including the affirmative vote of the Preferred Directors (as defined in Article V).

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

(iii) In the event the requirements of this subsection 2(f) are not complied with, this corporation shall forthwith either cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(f)(iv) below.

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

3. Conversion. The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z

Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

(a) Right to Convert. Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock, as applicable, into such number of fully paid and nonassessable shares of Common Stock as is determined (i) in the case of the Series A Preferred Stock, by dividing the Original Series A Issue Price by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date that the certificate is surrendered for conversion, (ii) in the case of the Series B Preferred Stock, by dividing the Original Series B Issue Price by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date that the certificate is surrendered for conversion, (iii) in the case of the Series C Preferred Stock, by dividing forty-seven cents (\$0.47) (the “**Original Series C Issue Price**”) for each outstanding share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) of Series C Preferred Stock by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date that the certificate is surrendered for conversion, (iv) in the case of the Series D Preferred Stock, by dividing the Original Series D Issue Price by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date that the certificate is surrendered for conversion, and (v) in the case of the Series E Preferred Stock, by dividing the Original Series E Issue Price by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date that the certificate is surrendered for conversion. The initial “**Conversion Price**” per share for shares of (A) Series A Preferred Stock shall be the Original Series A Issue Price, (B) Series B Preferred Stock shall be the Original Series B Issue Price, (C) Series C Preferred Stock shall be the Original Series C Issue Price, (D) Series D Preferred Stock shall be the Original Series D Issue Price, and (E) Series E Preferred Stock shall be the Original Series E Issue Price; provided, however, that the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock shall be subject to adjustment as set forth in subsection (d) of this Section 3. The holders of shares of Series Z Preferred Stock shall not have the right to convert shares of Series Z Preferred Stock into shares of Common Stock or into any other Series of Preferred Stock, except as provided in Section 3(b) below.

(b) Automatic Conversion. Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock immediately upon the corporation’s sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, the public offering price per share (net of underwriting discounts and commissions) of which is not less than three (3) times the Original Series E Issue Price, the public offering price in the aggregate (net of underwriting discounts and commissions) of which is not less than forty million dollars (\$40,000,000.00) and, as a result of which, such shares of Common Stock are designated for trading on the New York Stock Exchange, the American Stock Exchange or the Nasdaq Global

Market (a "Qualified Public Offering"). In addition, each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock immediately upon the date specified by written consent or agreement of the holders of at least (A) a majority of the then outstanding shares of Series A Preferred Stock with regard to the Series A Preferred Stock, (B) sixty-six and two-thirds percent (66⅔%) of the then outstanding shares of Series B Preferred Stock with regard to the Series B Preferred Stock, (C) sixty-six and two-thirds percent (66⅔%) of the then outstanding shares of Series C Preferred Stock with regard to the Series C Preferred Stock, (D) sixty-six and two-thirds percent (66⅔%) of the then outstanding shares of Series D Preferred Stock with regard to the Series D Preferred Stock, and (E) sixty-six and two-thirds percent (66⅔%) of the then outstanding shares of Series E Preferred Stock with regard to the Series E Preferred Stock. In the case of the Series Z Preferred Stock, each share of Series Z Preferred Stock shall automatically be converted into shares of Common Stock immediately (1) in the event of an initial public offering of the corporation's Common Stock whether or not a Qualified Public Offering, (2) on the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series Z Preferred Stock, or (3) on the date on which each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock convert to Common Stock. Each share of Series Z Preferred Stock shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (x) \$0.001 by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate(s) evidencing such share is surrendered for conversion. For purposes of this Section 3(b), the initial Conversion Price per share of Series Z Preferred Stock shall be \$0.001 and shall be subject to adjustment as set forth in Sections 3(d)(iii) and (iv) below.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same (except for automatic conversion pursuant to Section 3(b)) and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in

connection with an underwritten public offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock shall not be deemed to have converted such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock. The Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If the corporation shall issue, after the date upon which any shares of Series E Preferred Stock were first issued (the "**Purchase Date**"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Original Series C Issue Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for each series of Preferred Stock other than the Series Z Preferred Stock shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying the applicable Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the corporation for such issuance would purchase at the Conversion Price for each respective series of Preferred Stock in effect immediately prior to such issuance; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of such Additional Stock.

For purposes of this Section 3(d)(i)(A), all shares of the Company's Common Stock issuable upon exercise of all outstanding options, rights or warrants and upon conversion of all outstanding convertible securities and Preferred Stock of the Company shall be deemed to be outstanding, and immediately after any Additional Stock is deemed issued pursuant to Section 3(d)(i)(E), such shares of Additional Stock shall be deemed to be outstanding.

(B) No adjustment of the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock shall be made in an amount less than one cent (\$0.01) per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to

the adjustment being carried forward. Except to the limited extent provided for in subsections 3(d)(i)(E)(3) and 3(d)(i)(E)(4), no adjustment of such Conversion Price pursuant to this subsection 3(d)(i) shall have the effect of increasing such Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

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

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board including the affirmative vote of a majority of the Preferred Directors (as defined in Article V) irrespective of any accounting treatment.

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

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 3(d)(i)(C) and 3(d)(i)(D)), if any, received by the corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 3(d)(i)(C) and 3(d)(i)(D)).

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

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

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 3(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 3(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 3(d)(i)(E)) by this corporation after the Purchase Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 3(d)(iii) hereof, or

(B) up to an aggregate of nineteen million two hundred fifty-two thousand (19,252,000) shares of Common Stock issuable or issued to employees, officers, consultants or directors of this corporation directly or pursuant to a stock option plan or restricted stock plan approved by the Board, including, with respect to plans approved after the date hereof, the affirmative vote of a majority of the Preferred Directors, or

(C) up to five hundred thousand (500,000) shares of Common Stock issued to vendors of this corporation in transactions the primary purpose of which is not the raising of capital as approved by the Board, including the affirmative vote of each of the Preferred Directors, or

(D) up to five hundred thousand (500,000) shares in connection with debt or lease financings, except in connection with a transaction for which the

primary objective is the raising of capital, as approved by the Board, including the affirmative vote of a majority of the Preferred Directors, or

(E) shares of Common Stock issued or issuable (I) in a public offering before or in connection with which all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series Z Preferred Stock will be converted to Common Stock or (II) upon exercise of warrants or rights granted to underwriters in connection with such a public offering as approved by the Board including the affirmative vote of each of the Preferred Directors, or

(F) shares of Common Stock deemed to be issued upon issuance of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series Z Preferred Stock.

(iii) In the event the corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of such series of Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of such series of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(e) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than any subdivision, combination or issuance provided for elsewhere in Section 3(d) or any transaction subject to Section 2 above), provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock shall thereafter be entitled to receive, upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock, as applicable, the number of shares of stock or other securities or property of the corporation or otherwise, to which a holder of Common Stock

deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock after the recapitalization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. This corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock against impairment.

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

(i) No fractional shares shall be issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock, and the number of shares of Common Stock to be issued in connection with such conversion shall be rounded to the nearest whole share. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the then fair market value of such fractional shares as determined by the Board. For such purpose, all shares of Preferred Stock held by each holder shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash.

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

Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock.

(h) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z 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 the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(j) Notices. Any notice required by the provisions of this Section 3 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this corporation.

4. Voting Rights. The holder of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock could then be converted and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the by-laws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional

votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series Z Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

5. Protective Provisions.

(a) So long as shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then-outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock, voting together as a single class:

(i) create (by reclassification of an existing class or series, or otherwise) any new class or series of capital stock or other securities having a preference over, or being on a parity with, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or the Series E Preferred Stock with respect to voting, dividends, conversion, redemption, or upon liquidation;

(ii) reclassify any shares of capital stock or any other securities of this corporation into other securities having parity or any preference or priority as to dividends, redemption, conversion, voting, assets or otherwise superior to or on a parity with any such preference or priority of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock;

(iii) increase or decrease the authorized number of shares of any series of Preferred Stock or Common Stock;

(iv) apply any assets of the corporation to the redemption, retirement, purchase or other acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of Preferred Stock or Common Stock, except from officers, directors, employees or consultants of the corporation upon termination of their status as such pursuant to an agreement containing vesting and/or repurchase provisions approved by the Board;

(v) change the authorized number of directors as set forth in the corporation's Bylaws;

(vi) declare or pay any dividends or distribution;

(vii) sell, convey, license or otherwise dispose of or encumber all or substantially all of its property or business or enter into any transaction that would constitute a liquidation, dissolution or winding up of this corporation pursuant to Section 2(f) above, where the net proceeds per share to holders of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock is equal to or greater than one times the Original Series A Issue Price, Original Series B Issue Price, Original Series C Issue Price, Original Series D Issue Price, and Original

Series E Issue Price, respectively, which is then in effect;

(viii) take any action which would result in the imposition upon the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or the Series E Preferred Stock of any tax liability under Section 305 of the Internal Revenue Code of 1986, as amended;

(ix) increase the number of shares authorized under the corporation's stock option plan; or

(x) allow any subsidiary of the corporation to issue shares of capital stock other than to the corporation.

(b) So long as shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of each of (x) the Series A Preferred, voting separately as a single class, (y) the Series B Preferred Stock, voting separately as a single class, and (z) the Series C Preferred Stock, the Series D Preferred Stock, and the Series E Preferred Stock, voting together as a single class:

(i) amend, repeal, alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock;

(ii) amend or repeal any provision of, or add any provision to, the corporation's Certificate of Incorporation or Bylaws; or

(iii) sell, convey, license or otherwise dispose of or encumber all or substantially all of its property or business or enter into any transaction that would constitute a liquidation, dissolution or winding up or this corporation pursuant to Section 2(f) above where the net proceeds per share to holders of each of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock is less than one times the Original Series A Issue Price, Original Series B Issue Price, Original Series C Issue Price, Original Series D Issue Price, and Original Series E Issue Price, respectively, which is then in effect.

6. Status of Converted Stock. In the event any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series Z Preferred Stock shall be converted pursuant to Section 3 hereof, the shares so converted shall be canceled and shall not be issuable by the corporation. The Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in the corporation's authorized capital stock.

C. Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock

shall be entitled to receive, when and as declared by the Board, out of any assets of the corporation legally available therefor, such dividends as may be declared from time to time by the Board.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the corporation, the assets of the corporation shall be distributed as provided in Section B(2) above.

3. Redemption. The Common Stock is not redeemable.

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

V

The authorized number of members of the Board shall be set forth in the Bylaws of this corporation. The holders of Preferred Stock, voting together as a single class, shall have the right to elect three (3) members of the Board (the "**Preferred Directors**") at each meeting for the election of directors or pursuant to each consent of the corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. The holders of Common Stock, voting together as a separate class, shall be entitled to elect two (2) members of the Board at each meeting for the election of directors or pursuant to each consent of the corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. Any remaining authorized members of the Board shall be elected by a majority of the holders of Common Stock and Preferred Stock, voting together as a single class, at each meeting for the election of directors or pursuant to each consent of the corporation's stockholders for the election of directors. Any director may be removed, and any vacancy caused by the resignation, death or removal of a director may be filled, only upon the vote or consent of the stockholders entitled to elect such director.

VI

The corporation is to have perpetual existence.

VII

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of the General Corporation Law of the State of Delaware or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a

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

VIII

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

1. The management of the business and the conduct of the affairs of the corporation shall be vested in the Board. The number of directors which shall constitute the whole Board shall be fixed by, or in the manner provided in, the Bylaws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, namely, the total number of directors which the corporation would have if there were no vacancies. No election of directors need be by written ballot.
2. After the original or other Bylaws of the corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, and, after the corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the Bylaws of the corporation may be exercised by the Board subject to the provisions of this Eighth Amended and Restated Certificate of Incorporation; provided, however, that any provision for the classification of directors of the corporation for staggered terms pursuant to the provision of subsection (d) of Section 141 of the General Corporation Law of the State of Delaware shall be set forth in an initial Bylaw or in a Bylaw adopted by the stockholders of the corporation entitled to vote unless provisions for such classification shall be set forth in this certificate of incorporation.
3. Whenever the corporation shall be authorized to issue only one class of stock, each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the corporation shall be authorized to issue more than one class of stock, no outstanding share of any class of stock which is denied voting power under the provisions of this Eighth Amended and Restated Certificate of Incorporation shall entitle the holder thereof to the right to vote at any meeting of stockholders except as the provisions of paragraph (2) of subsection (b) of Section 242 of the General Corporation Law of the State of Delaware shall otherwise require; provided, that no share of any such class which is otherwise denied voting power shall entitle the holder thereof to vote upon the increase or decrease in the number of authorized shares of said class.

IX

The personal liability of the directors of the corporation is hereby eliminated to the fullest extent permitted by the provision of paragraph (7) of subsection (b) of Section 102 of the

General Corporation Law of the State of Delaware, as the same may be amended and supplemented.

X

To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. The corporation shall, to the fullest extent permitted by the provisions of Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person. Neither any amendment nor repeal of this Article X, nor the adoption of any provision of the corporation's Certificate of Incorporation inconsistent with this Article X, shall eliminate or reduce the effect of this Article X in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

XI

From time to time any of the provisions of this Eighth Amended and Restated Certificate of Incorporation may be amended, altered, or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the corporation by this certificate of incorporation are granted subject to the provisions of this Article XI.

XII

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

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