

**SEVENTH AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
AUDYSSEY LABORATORIES, INC.**

**May 26, 2010**

Audyssey Laboratories, 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 Audyssey Laboratories, Inc. The original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on November 22, 2004. The Amended and Restated Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on April 26, 2005. The Second Amended and Restated Certificate of Incorporation of the corporation (which contained an administrative error) was filed with the Secretary of State of the State of Delaware on July 19, 2005. The Third Amended and Restated Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on July 25, 2005. The Fourth Amended and Restated Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on July 31, 2006. The Fifth Amended and Restated Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on August 25, 2008. The Sixth Amended and Restated Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on December 29, 2008, as corrected on January 7, 2009.

2. This Seventh Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") was adopted at a duly called meeting of the Board of Directors of Audyssey Laboratories, Inc. (the "Board of Directors"), at which a quorum was present and in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware. The stockholders of the Corporation duly approved and adopted the proposed further amendment and restatement of the Certificate of Incorporation by written consent in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

3. The text of the Sixth Amended and Restated Certificate of Incorporation of Audyssey Laboratories, Inc. is hereby restated and further amended to read in its entirety as follows:

**ARTICLE 1**

The name of this corporation is Audyssey Laboratories, Inc. (the "Corporation").

**ARTICLE 2**

The address of the registered office of this Corporation in the State of Delaware is 32 West Loockerman Street, Suite 201, in the City of Dover, County of Kent, 19904. The name of its registered agent at such address is Registered Agent Solutions, Inc.

*State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:42 PM 05/26/2010  
FILED 12:38 PM 05/26/2010  
SRV 100575843 - 3885322 FILE*

### ARTICLE 3

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (as amended from time to time, the "DGCL").

### ARTICLE 4

4.1 Authorization of Stock. This Corporation is authorized to issue two classes of stock to be designated, respectively, common stock, par value \$0.0001 per share (the "Common Stock"), and preferred stock, par value \$0.0001 per share (the "Preferred Stock"). The total number of shares that this Corporation is authorized to issue is 20,853,314 shares. The total number of shares of Common Stock authorized to be issued is 13,000,000 shares. The total number of shares of Preferred Stock authorized to be issued is 7,853,314 shares of which 1,550,000 shares shall be designated as Series A Convertible Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock"), 2,118,648 shares shall be designated as Series B Convertible Preferred Stock, par value \$0.0001 per share (the "Series B Preferred Stock"), 1,018,000 shares shall be designated as Series C Convertible Preferred Stock, par value \$0.0001 per share (the "Series C Preferred Stock"), 2,000,000 shares shall be designated as Series D Convertible Preferred Stock, par value \$0.0001 per share (the "Series D Preferred Stock"), and 1,166,666 shares shall be designated as Series E Convertible Preferred Stock, par value \$0.0001 per share (the "Series E Preferred Stock").

4.2 Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on each series of Preferred Stock are as set forth below in this Section 4.2.

#### 4.2.1 Dividend Provisions.

(a) The holders of the outstanding shares of 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) on the other series of Preferred Stock and the Common Stock, at the rate of \$0.24 per annum for each share of Series E Preferred Stock (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like effected after the date the Certificate of Incorporation is filed with the Secretary of State of the State of Delaware (the "Filing Date")), payable if, as and when declared by the Board of Directors. Such dividends shall be non-cumulative. The holders of the outstanding shares of Series E Preferred Stock can waive any dividend preference to which such holders are entitled under this Section 4.2.1(a) upon the affirmative vote or written consent of the holders of at least two-thirds of the shares of such series then outstanding. If, upon the declaration of a dividend with respect to the Series E Preferred Stock pursuant to this Section 4.2.1(a), less than all of the then-accrued but unpaid dividends are being paid with respect to such Series E Preferred Stock, then the dividends paid shall be distributed ratably among the holders of the Series E Preferred Stock in proportion to the total accrued but unpaid dividends to which each such holder is otherwise entitled to receive under this Section 4.2.1.

(b) After payment of such dividends pursuant to Section 4.2.1(a), the holders of the outstanding shares of Series D 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) on the other series of Preferred Stock and the Common Stock, at the rate of \$0.20 per annum for each share of Series D

Preferred Stock (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like effected after the date this Filing Date), payable if, as and when declared by the Board of Directors. Such dividends shall be non-cumulative. The holders of the outstanding shares of Series D Preferred Stock can waive any dividend preference to which such holders are entitled under this Section 4.2.1(b) upon the affirmative vote or written consent of the holders of at least two-thirds of the shares of such series then outstanding. If, upon the declaration of a dividend with respect to the Series D Preferred Stock pursuant to this Section 4.2.1(b), less than all of the then-accrued but unpaid dividends are being paid with respect to such Series D Preferred Stock, then the dividends paid shall be distributed ratably among the holders of the Series D Preferred Stock in proportion to the total accrued but unpaid dividends to which each such holder is otherwise entitled to receive under this Section 4.2.1.

(c) After payment of such dividends pursuant to Sections 4.2.1(a) and 4.2.1(b), the holders of the outstanding shares of Series A, Series B and Series C 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) on the Common Stock, at the rate of (i) \$0.20 per annum for each share of Series C Preferred Stock (ii) \$0.0944 per annum for each share of Series B Preferred Stock and (iii) \$0.08 per annum for each share of Series A Preferred Stock (subject in each case to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like effected after the Filing Date), payable if, as and when declared by the Board of Directors. Such dividends shall be non-cumulative. The holders of the outstanding shares of each of Series A, Series B, and Series C Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 4.2.1(c) upon the affirmative vote or written consent of the holders of at least a majority of the shares of such series then outstanding (voting as a separate series and not all together as a single class and on an as-converted basis). If, upon the declaration of a dividend with respect to the Series A, Series B and Series C Preferred Stock pursuant to this Section 4.2.1(c), less than all of the then-accrued but unpaid dividends are being paid with respect to such Stock, then the dividends paid shall be distributed ratably among the holders of the Series A, Series B and Series C Preferred Stock in proportion to the total accrued but unpaid dividends to which each such holder is otherwise entitled to receive under this Section 4.2.1.

(b) After payment of such dividends pursuant to Sections 4.2.1(a), 4.2.1(b) and 4.2.1(c), any additional dividends or distributions shall be distributed among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted to Common Stock at the then effective Conversion Rate.

#### 4.2.2 Liquidation Preference.

(a) In the event of any Liquidation Event, either voluntary or involuntary, the holders of the Series E Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event (the "Proceeds") to the holders of the other series of Preferred Stock and of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for the Series E Preferred Stock, plus declared or accrued but unpaid dividends on such share. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of Series E Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series E Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 4.2.2(a). For purposes of the Certificate of Incorporation, "Original Issue Price" shall mean \$3.00

per share for each share of Series E Preferred Stock, as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to the Series E Preferred Stock effected after the Filing Date.

(b) Upon completion of the distribution required by Section 4.2.2(a), in the event of any Liquidation Event, either voluntary or involuntary, the holders of the Series D Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the Proceeds to the holders of the other series of Preferred Stock and of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for the Series D Preferred Stock, plus declared or accrued but unpaid dividends on such share. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of Series D Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series D Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 4.2.2(b). For purposes of the Certificate of Incorporation, "Original Issue Price" shall mean \$2.50 per share for each share of Series D Preferred Stock, as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to the Series D Preferred Stock effected after the Filing Date.

(c) Upon completion of the distributions required by Sections 4.2.2(a) and 4.2.2(b), in the event of any Liquidation Event, either voluntary or involuntary, the holders of the Series A, Series B and Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the remaining Proceeds to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the sum of the applicable Original Issue Price (as defined below) for such series of Preferred Stock, plus declared or accrued but unpaid dividends on such share. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of Series A, Series B and Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, the entire remaining Proceeds legally available for distribution shall be distributed ratably among the holders of the Series A, Series B and Series C Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 4.2.2(c). For purposes of the Certificate of Incorporation, "Original Issue Price" shall mean \$1.00 per share for each share of Series A Preferred Stock, \$1.18 per share for each share of Series B Preferred Stock, and \$2.50 per share for each share of Series C Preferred Stock, each as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock effected after the Filing Date.

(d) Upon the completion of the distribution required by Sections 4.2.2(a) and 4.2.2(b), all of the remaining Proceeds shall be distributed among the holders of the Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming full conversion of all such shares of Preferred Stock).

(e) A "Liquidation Event" shall include (i) the closing of the sale, transfer, exclusive license or other disposition of (A) all or substantially all of this Corporation's assets or (B) all or substantially all of this Corporation's intellectual property, (ii) the consummation of the merger or consolidation of (A) this Corporation with or into another entity or (B) a subsidiary of this Corporation and this Corporation issues shares of its capital stock pursuant to such merger or consolidation with or into another entity (except, in each case, a merger or consolidation in which the shares of capital stock of this Corporation outstanding immediately prior to such merger or consolidation continue to represent or are converted into or exchanged for securities which represent at least 50% of the voting power of the capital stock of this Corporation or the surviving or acquiring entity immediately following the transaction), or (iii) a liquidation, dissolution or winding up of this Corporation; *provided, however*, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this Corporation's incorporation or

to create a holding company that will be owned in substantially the same proportions by the persons who held this Corporation's securities immediately prior to such transaction. The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the holders of a majority of the outstanding Preferred Stock (voting together as a single class, and on an as-converted basis).

(f) In any Liquidation Event, if Proceeds received by this Corporation or its stockholders is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions (other than restrictions under applicable securities laws) on free marketability:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the twenty trading day period ending three trading days prior to the closing of the Liquidation Event;

(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 twenty trading day period ending three trading days prior to the closing of the Liquidation Event; and

(C) If there is no active public market, the value shall be the fair market value thereof, as reasonably determined in good faith by the Board of Directors (which such determination shall include the approval of the directors elected by the holders of each series of Preferred Stock having the right to elect directors hereunder).

(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 to reflect the approximate fair market value thereof, as reasonably determined in good faith by the Board of Directors (with such determination including the approval of the directors elected by the holders of each series of the Preferred Stock).

(iii) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event may be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event.

(g) In the event the requirements of this Section 4.2.2 are not complied with, this Corporation shall forthwith either:

(i) cause the closing of such Liquidation Event to be postponed until such time as the requirements of this Section 4.2.2 have been complied with; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the 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 Section 4.2.2(h).

(h) This Corporation shall give each holder of record of Preferred Stock written notice of such impending Liquidation Event not later than twenty days prior to the stockholders' meeting called to approve such transaction, or twenty 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 4.2.2, and this Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty days after this Corporation has given the first notice provided for herein or sooner than ten days after this Corporation has given notice of any material changes; *provided, however*, that subject to compliance with the DGCL such periods may be shortened upon the written consent of the holders of Preferred Stock that represent at least a majority of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(i) This Corporation shall not have the power to effect a Liquidation Event unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 4.2.2.

#### 4.2.3 Redemption.

(a) At any time after July 25, 2015, but within ninety days after the receipt by this Corporation of a written request from the holders of not less than a majority of the then-outstanding shares of Series E, Series D, Series B and Series A Preferred Stock (voting together as a single class on an as-converted basis), that all of the then-outstanding shares of Series E, Series D, Series B and Series A Preferred Stock be redeemed, this Corporation shall, to the extent it may lawfully do so, redeem in twelve equal quarterly installments (each payment date being a "Redemption Date") the then-outstanding shares of Series E, Series D, Series B and Series A Preferred Stock by paying in cash therefor a sum per share equal to the greater of (i) fair market value (as determined by an independent appraiser selected by holders of a majority of the shares of Series E, Series D, Series B and Series A Preferred Stock being redeemed (voting together as a single class on an as-converted basis) and acceptable to the Corporation), or (ii) the applicable Original Issue Price for such shares of Series E, Series D, Series B and Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like effected after the Filing Date) plus all declared but unpaid dividends on such shares (such greater amount, the "Redemption Price"); provided, however, in no case shall any Series A Preferred Stock, Series B Preferred Stock, Series D Preferred Stock or Common Stock be redeemed prior to full redemption of the Series E Preferred Stock; provided, further, in no case shall any Series A Preferred Stock, Series B Preferred Stock or Common Stock be redeemed prior to the full redemption of the Series D Preferred Stock. To facilitate such Series E Preferred Stock redemption priority, this Corporation may either (i) accelerate payment of the Redemption Price to the holders of Series E Preferred Stock, and/or (ii) postpone payment of the Redemption Price on the Series A, Series B or Series D Preferred Stock until after the full Series E Preferred Stock Redemption Price has been paid in full. Furthermore, to facilitate such Series D Preferred Stock redemption priority, this Corporation may either (i) accelerate payment of the Redemption Price to the holders of Series D Preferred Stock, and/or (ii) postpone payment of the Redemption Price on the Series A or Series B Preferred Stock until after the full Series D Preferred Stock Redemption Price has been paid in full. The number of shares of Series E, Series D, Series B and Series A Preferred Stock that this Corporation shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (x) the aggregate number of shares of Series E, Series D, Series B and Series A Preferred Stock outstanding immediately prior to such Redemption Date by (y) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Any redemption of Series E, Series D, Series B and Series A Preferred Stock effected pursuant to this Section 4.2.3(a) shall be made on a pro rata basis among the holders of Series E, Series D, Series B and Series A Preferred Stock in proportion to the aggregate Redemption Price that each such holder of Series E, Series D, Series B and/or Series A Preferred Stock is entitled to receive on the applicable Redemption Date.

(b) At least fifteen but no more than thirty days prior to each Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series E, Series D, Series B and/or Series A Preferred Stock, at the address last shown on the records of this Corporation for such holder, notifying such holder of the redemption to be effected on the applicable Redemption Date, specifying the number and series of shares of Series E, Series D, Series B and/or Series A Preferred Stock to be redeemed from such holder, the Redemption Prices for each series of Series E, Series D, Series B and/or Series A Preferred Stock and the place at which payment may be obtained and calling upon such holder to surrender to this Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 4.2.3(c), on or after each Redemption Date, each holder of Series E, Series D, Series B and/or Series A Preferred Stock on such Redemption Date shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the applicable Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. If less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after each Redemption Date, if the Redemption Price is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor and there shall not have been a default in payment of the Redemption Price, all rights of the holders of shares of Series E, Series D, Series B and Series A Preferred Stock designated for redemption on such Redemption Date in the Redemption Notice as holders of Series E, Series D, Series B and/or Series A Preferred Stock (except the right to receive the applicable Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of this Corporation legally available for redemption of shares of Series E, Series D, Series B and Series A Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series E, Series D, Series B and Series A Preferred Stock to be redeemed on such date, those funds that are legally available will be paid ratably among the holders of such shares to be redeemed in proportion to the aggregate Redemption Price that each such holder would be entitled to receive pursuant to Section 4.2.3(a). The shares of Series E, Series D, Series B and Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of this Corporation are legally available for the redemption of shares of Series E, Series D, Series B and Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares that this Corporation has become obliged to redeem on any Redemption Date but that it has not redeemed.

(d) On or prior to each Redemption Date, this Corporation shall deposit the Redemption Price of all shares of Series E, Series D, Series B and Series A Preferred Stock designated for redemption on such Redemption Date in the Redemption Notice, and not yet redeemed or converted, with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to publish the notice of redemption thereof and pay the Redemption Price for such shares to their respective holders on or after the Redemption Date, upon receipt of notification from this Corporation that such holder has surrendered his, her or its share certificate to this Corporation pursuant to Section 4.2.3(b). As of the date of such deposit (even if prior to the Redemption Date), the deposit shall constitute full payment of such shares to their holders, and from and after the date of the deposit, the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of

the Redemption Price for the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by this Corporation pursuant to this Section 4.2.3(d) for the redemption of shares converted into shares of Common Stock pursuant to Section 4.2.4 prior to the Redemption Date shall be returned to this Corporation pursuant to this Section 4.2.3(d) remaining unclaimed at the expiration of two years following the Redemption Date shall thereafter be returned to this Corporation upon its request expressed in a resolution of the Board of Directors.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (x) the applicable Original Issue Price for such series plus all declared dividends that are accrued and unpaid as of the time of conversion by (y) the applicable Conversion Price for such series (the conversion rate for a series of Preferred Stock into Common Stock is herein referred to as the "Conversion Rate" for such series), determined as hereafter provided, in effect on the date the certificate for such shares is surrendered for conversion. The initial Conversion Price per share for the Series A, Series B, Series C and Series E Preferred Stock shall be the Original Issue Price applicable to each such series and the Conversion Price for the Series D Preferred Stock shall be \$2.3401721; *provided, however*, that the Conversion Price for the Preferred Stock shall be subject to further adjustment as set forth in Section 4.2.4(d).

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the applicable Conversion Rate at the time in effect, plus that number of shares of Common Stock equal to all declared dividends that are accrued and unpaid as of the time of conversion divided by the then current Conversion Price, immediately upon the earlier of (i) this Corporation's sale of Common Stock in a firm commitment underwritten public offering, pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), where the Corporation's registered securities are to be listed on the New York Stock Exchange, the American Stock Exchange or The Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market, the public offering price of which is not less than three times the applicable Original Issue Price for each series of Preferred Stock (as adjusted to reflect subsequent stock dividends, stock splits, recapitalizations or the like effected after the Filing Date) and with aggregate proceeds of at least \$30,000,000 (a "Qualified Public Offering") or (ii) the date specified by written consent or agreement of the holders of (A) a majority of the then outstanding shares of Series D Preferred Stock (voting on an as-converted basis), (B) a majority of the then outstanding shares of Series A, Series B, Series C and Series E Preferred Stock (voting together as a single class, and on an as-converted basis) and (C) at least two-thirds of the then outstanding shares of Series E Preferred Stock (voting on an as-converted basis).

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock pursuant to Section 4.2.4(a), such holder shall surrender the certificate or certificates therefor (or an affidavit of lost certificate), duly endorsed, at the office of this Corporation or of any transfer agent for Preferred Stock and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common



Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering 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 persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with Automatic Conversion provisions of clause (ii) of Section 4.2.4(b), such conversion shall be deemed to have been made on the conversion date described in the stockholder consent approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If this Corporation shall issue any Additional Stock without consideration or for a consideration per share less than the Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith be adjusted to a price determined by (except as otherwise provided in this Section 4.2.4(d)(ii) below) multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by this Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issuance plus the number of shares of such Additional Stock. For purposes of this Section 4.2.4(d), the term "Common Stock Outstanding" shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of outstanding Preferred Stock, (3) Common Stock issuable upon exercise of outstanding stock options and (4) Common Stock issuable upon exercise (and, in the case of warrants to purchase Preferred Stock, conversion) of outstanding warrants. Shares described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(ii) No adjustment of the Conversion Price for Preferred Stock shall be made in an amount less than one cent per share, *provided* that any adjustments that 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 years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in Sections 4.2.4(d)(vi)(C), 4.2.4(d)(vi)(D) and 4.2.4(d)(ix), no adjustment of such Conversion Price pursuant to this Section 4.2.4(d) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(iii) In the case of the issuance of Additional 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.

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

(v) In the case of the issuance 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 purposes of determining the number of shares of Additional Stock issued and the consideration paid therefor:

(A) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions of exercisability, including without limitation, the passage of time, but without taking into account potential anti-dilution 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 Section 4.2.4(d)(iv) and Section 4.2.4(d)(v)), if any, received by this 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 anti-dilution adjustments) for the Common Stock covered thereby.

(B) 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 anti-dilution 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 this 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 this Corporation (without taking into account potential anti-dilution 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 Section 4.2.4(d)(iv) and Section 4.2.4(d)(v)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the applicable Conversion Price of the 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.

(D) 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 applicable Conversion Price of 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 that 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,

(E) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4.2.4(d)(vi)(A) and

4.2.4(d)(vi)(B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4.2.4(d)(vi)(C) or 4.2.4(d)(vi)(D).

(vi) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4.4(d)(vi)) by this Corporation on or after the Filing Date other than:

(A) Common Stock issued pursuant to a transaction described in Section 4.2.4(d)(viii);

(B) Up to 2,020,624 shares of Common Stock (excluding shares repurchased at cost by this Corporation in connection with the termination of service) issued to employees, directors, consultants and other services providers for the primary purpose of soliciting or retaining their services pursuant to plans or agreements approved by the Board of Directors, such amount to also include any such shares approved or issued prior to the Filing Date ("Authorized Plan Shares"), provided, however, that such amount shall be automatically increased without a need to formally amend the Certificate of Incorporation to reflect any shares of Common Stock (i) reacquired by the Company from employees, directors or consultants at cost pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or (ii) approved to be issued to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary by the unanimous approval of the Board of Directors and the stockholders holding a majority of the Preferred Stock;

(C) Common Stock issued pursuant to a firmly underwritten public offering pursuant to which all Preferred Stock shall automatically convert into Common Stock pursuant to Section 4.2.4(b);

(D) Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding on the Filing Date;

(E) Common Stock issued in connection with a *bona fide* business acquisition of or by this Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise which is approved by the Board of Directors, including a majority of the directors elected by holders of Preferred Stock having the right to elect directors hereunder (the "Preferred Directors");

(F) Common Stock issued to persons or entities with which this Corporation has business relationships, including but not limited to banks or other financial institutions, equipment lessors, third party service providers and strategic partners, provided (i) such issuances are for other than primarily equity financing purposes, (ii) at the time of each such issuance, the aggregate of such issuance and similar issuances in the preceding twelve-month period does not exceed 2% of the then outstanding Common Stock of this Corporation (assuming full conversion and exercise of all convertible and exercisable securities), and (iii) such issuance was approved by the Board of Directors, including a majority of the directors elected by the holders of Preferred Stock having the right to elect directors hereunder;

(G) Common Stock issued or deemed issued pursuant to Section 4.2.4(d)(vi) as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of this Section 4.2.4(d); or

(H) Common Stock that is issued with the unanimous approval of the Board of Directors, including a majority of the Preferred Directors, and the Board of Directors, including a majority of the Preferred Directors, specifically states that it shall not be Additional Stock.

(vii) If this Corporation should at any time or from time to time after the Filing 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 ("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 Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable upon conversion of each share of such series of Preferred Stock shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(viii) If the number of shares of Common Stock outstanding at any time after the Filing 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 Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable upon conversion of each share of such series of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. If this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4.2.4(d)(viii), then, in each such case for the purpose of this Section 4.2.4(e), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this Corporation into which their shares of the Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4.2.4 or in Section 4.2.2), provision shall be made so that the holders of Preferred Stock of any series shall thereafter be entitled to receive upon conversion of Preferred Stock of such series the number of shares of stock or other securities or property of this 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 4.2.4 with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section 4.2.4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

(g) No Impairment. This Corporation will not, without the appropriate vote of the stockholders under the DGCL or Section 4.2.6, by amendment of the Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4.2.4 and in the taking of all such action as may

be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

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

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock and the aggregate number of shares of Common Stock to be issued to particular stockholders, shall be rounded down to the nearest whole share and the Corporation shall pay in cash the fair market value of any fractional shares as of the time when entitlement to receive such fractions is determined. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 4.2.4, this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and within five days 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. This Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Preferred Stock.

(i) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security, this Corporation shall mail to each holder of Preferred Stock, at least ten 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 or distribution, and the amount and character of such dividend or distribution. In addition, this Corporation shall provide to each holder of Preferred Stock written notice least ten days prior to the earlier of the record date or effective date of any (i) capital reorganization of the Corporation, (ii) any reclassification of the Common Stock of the Corporation, (iii) any Liquidation Event, or (iv) the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation.

(j) 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 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of Preferred Stock, this Corporation shall 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.

(k) Notices. Any notice required by the provisions of this Section 4.2.4 to be given to the holders of shares of Preferred Stock shall be deemed given five days after deposited in the

United States mail, postage prepaid, and addressed to each holder of record at his, her or its address appearing on the books of this Corporation.

(l) Status of Converted Stock. If any shares of Preferred Stock shall be converted pursuant to this Section 4.2.4, the shares so converted shall be cancelled and shall not be available for reissuance.

(m) Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of a two-thirds of the outstanding shares of such series of Preferred Stock. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

#### 4.2.5 Voting Rights.

(a) General Voting Rights. The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such 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 Bylaws of this Corporation (the "Bylaws"); and except as provided in Section 4.2.5(b) below with respect to the election of directors by the separate class vote of the holders of Common Stock, 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 Preferred Stock of any series held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors. As long as a majority of the originally issued shares of Series A Preferred Stock are outstanding, the holders of such shares of Series A Preferred Stock shall be entitled to elect one director of this Corporation. As long as a majority of the originally issued shares of Series B Preferred Stock are outstanding, the holders of such shares of Series B Preferred Stock shall be entitled to elect one director of this Corporation. As long as a majority of the originally issued shares of Series D Preferred Stock are outstanding, the holders of such shares of Series D Preferred Stock shall be entitled to elect two directors of this Corporation. The holders of outstanding Common Stock shall be entitled to elect one director of this Corporation. The holders of Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of this Corporation.

(c) Notwithstanding the provisions of Section 223(a)(1) and Section 223(a)(2) of the DGCL, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors of amendment of the Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; *provided, however,* that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board of Directors' action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect

such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

#### 4.2.6 Protective Provisions.

(a) General Authorization. So long as any of the authorized shares of Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds of the then-outstanding shares of Preferred Stock, voting together as a separate class and on an as-converted basis, take any of the following actions (whether directly, or indirectly by merger, consolidation, reorganization, reincorporation, or other similar transaction):

(i) sell, convey or exclusively license all or substantially all of the Corporation's property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any transaction or series of related transactions in which fifty percent or more of the voting power of the Corporation is disposed of;

(ii) consummate any Liquidation Event;

(iii) amend, alter, or waive or repeal any provision of the Certificate of Incorporation or Bylaws;

(iv) authorize, create or issue any class or series of stock or any other securities convertible into or exercisable for or issued in connection with equity securities having rights, preferences or privileges superior to or on parity with the Series E Preferred Stock;

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

(vi) change the size of the Board of Directors from five members; or

(vii) pay any dividend or other distribution on, or make any redemption of, any equity securities of the Company; *provided, however*, that this restriction shall not apply to (1) the redemption described in Section 4.2.3 and (2) the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment.

(b) Special Authorization. The Corporation shall not effect a transaction or series of related transactions that affects the dividend rights, voting rights, liquidation preferences, redemption rights, conversion rights or anti-dilution protections afforded a particular series of Preferred Stock adversely and in a manner that is not consistent with the treatment of the other series of Preferred Stock, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then-outstanding shares of the adversely-affected series of Preferred Stock (voting on an as-converted bases).

(c) Series D Authorization. The Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds of the then-outstanding shares of Series D Preferred Stock, voting on an as-converted basis, take

any of the following actions (whether directly, or indirectly by merger, consolidation, reorganization, reincorporation, or other similar transaction):

(i) amend, waive, alter or repeal of any provisions of the Certificate of Incorporation or Bylaws that adversely affects the Series D Preferred Stock, which for the avoidance of doubt includes any change to the terms of Series A, Series B, or Series C Preferred Stock that would in any way have a material negative impact on the Series D Preferred Stock (subject to (iii) below);

(ii) increase or decrease the authorized number of shares of Series D Preferred Stock; and

(iii) authorize, create or issue any class or series of stock or any other securities convertible into or exercisable for or issued in connection with equity securities having rights, preferences or privileges superior to or on a parity with the Series D Preferred Stock, unless such securities are issued in a bona fide financing transaction which the Board of Directors deems is necessary for the Corporation to achieve its business objectives.

(d) Series E Authorization. The Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds of the then-outstanding shares of Series E Preferred Stock, voting on an as-converted basis, take any of the following actions (whether directly, or indirectly by merger, consolidation, reorganization, reincorporation, or other similar transaction):

(i) amend, waive, alter or repeal of any provisions of the Certificate of Incorporation or Bylaws that adversely affects the Series E Preferred Stock, which for the avoidance of doubt includes any change to the terms of Series A, Series B, Series C or Series D Preferred Stock that would in any way have a material negative impact on the Series E Preferred Stock (subject to (iii) below);

(ii) increase or decrease the authorized number of shares of Series E Preferred Stock; and

(iii) authorize, create or issue any class or series of stock or any other securities convertible into or exercisable for or issued in connection with equity securities having rights, preferences or privileges superior to or on a parity with the Series E Preferred Stock, unless such securities are issued in a bona fide financing transaction which the Board of Directors deems is necessary for the Corporation to achieve its business objectives.

#### 4.3 Common Stock.

4.3.1 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 Common Stock shall be entitled to receive, if, as and when declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

4.3.2 Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 4.2.



4.3.3 Redemption. The Common Stock shall be redeemable if, and only if, (a) the Preferred Stock is redeemed pursuant to Section 4.2.3 and (b) for purposes of such redemption, such shares of Preferred are redeemed at the fair market value of such shares pursuant to Section 4.2.3(a)(i). In such case, the Common Stock shall be redeemable pursuant to Section 4.2.3 as if such Common Stock were Preferred Stock.

4.3.4 Voting Rights. Subject to Section 4.2.5, 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, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

## ARTICLE 5

The following provisions are included for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

5.1 The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

5.2 Subject to Section 4.2.6(a)(iii) and 4.2.6(c)(i), the directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the Bylaws.

5.3 Election of directors need not be by written ballot unless the Bylaws so provide,

5.4 To the fullest extent permitted by law, no director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any other law of the State of Delaware is amended after approval by the stockholders of this Article 5 to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of this Article 5 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

5.5 In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation and any Bylaws, adopted by the stockholders of the Corporation; *provided, however*, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

## ARTICLE 6

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 DGCL) 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.

## ARTICLE 7

Subject to the provisions of Section 4.2.6 hereof, this Corporation reserves the right to amend, alter, change or repeal any provision contained in the Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever herein are granted subject to this reservation.

## ARTICLE 8

8.1 The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal or legal representatives; *provided, however*, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article 8 shall include the right to have paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

8.2 The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article 8 to directors and officers of the Corporation.

8.3 The rights to indemnification and to the advance of expenses conferred in this Article 8 shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation, the Bylaws, any statute, any agreement, vote of stockholders or disinterested directors or otherwise.

8.4 Any amendment, repeal or modification of this Article 8 shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such amendment, repeal or modification.

## ARTICLE 9

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

court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said 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 the Corporation, as the case may be, and also on the Corporation.

#### ARTICLE 10

This Corporation renounces any interest or expectancy of this Corporation in, or in being offered an opportunity to participate in any business opportunity presented to, acquired, created or developed by, or which otherwise comes into the possession of, (a) any director of this Corporation who is not an employee of this Corporation, (b) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any of such holder's affiliates (collectively "Covered Persons") (unless such opportunity is presented to, or acquired, created or developed by, or otherwise comes into possession of, such Covered Persons expressly and solely in such Covered Person's capacity as a director of this Corporation) or (c) any other business opportunity this Corporation or one or more of its directors or stockholders.

#### ARTICLE 11

In connection with repurchases by this Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, Sections 502 and 503 of the California Corporations Code shall not apply in all or in part with respect to such repurchases.

No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Corporation is subject to Section 2115 of the California Corporation Code. During such time or times that the Corporation is subject to Section 2115(b) of the California Corporation Code, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (a) the names of such candidate or candidates have been placed in nomination prior to the voting and (b) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected. During such time or times that the Corporation is subject to Section 2115(b) of the California Corporation Code, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote for that director as provided above; *provided, however*, that unless the entire Board of Directors is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

IN WITNESS WHEREOF, the undersigned has signed this Seventh Amended and Restated Certificate of Incorporation as of the date first above written.



Neal Osterhaus  
COO and acting CEO