

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF ARCHIVE SYSTEMS, INC.

Archive Systems, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify that:

1. The name of the Corporation is Archive Systems, Inc. The Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware on August 12, 2004 under the name of ASI Merger Corp.

2. This Amended and Restated Certificate of Incorporation was duly adopted by the board of directors and the stockholders of the Corporation in accordance with Sections 141(f), 228, 242 and 245 of the General Corporation Law ("DGCL") of the State of Delaware.

3. The Certificate of Incorporation of the Corporation is hereby amended and restated to read in full as follows:

**FIRST:** The name of the corporation is Archive Systems, Inc. (hereinafter called the "Corporation").

**SECOND:** The registered office of the Corporation is to be located at 2711 Centerville Road, Suite 400, in the City of Wilmington, in the County of New Castle, in the State of Delaware. The name of its registered agent at that address is Corporation Service Company.

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

**FOURTH:** The Corporation is authorized to issue two classes of shares of capital stock, to be designated respectively Preferred Stock ("Preferred Stock") and Common Stock ("Common Stock"), which shall have a par value of \$0.001 per share. The total number of shares of capital stock that the Corporation is authorized to issue is 34,376,244. The total number of shares of Preferred Stock that the Corporation is authorized to issue is 7,263,859, 2,461,533 of which shares shall be designated Series A Convertible Preferred Stock (the "Series A Stock") and 4,802,326 of which shares shall be designated Series B Convertible Preferred Stock (the "Series B Stock"). The total number of shares of Common Stock that the Corporation is authorized to issue is 27,112,385.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of Common Stock are subject to, and qualified in their entirety by, the rights, powers and privileges of the holders of the Preferred Stock as set forth in this Amended and Restated Certificate of Incorporation, as the same may be amended from time to time.

2. Voting Rights. Except as otherwise required by the DGCL or this Amended and Restated Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of Common Stock held by such stockholder of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of stockholders of the Corporation. Except as otherwise required by DGCL or this Amended and Restated Certificate of Incorporation, the holders of Common Stock and Preferred Stock shall vote together (or render written consents in lieu of a vote) as a

single class on all matters submitted to the stockholders for a vote. The stockholders shall not have the right to cumulate their shares in voting for the election of directors.

3. Dividends. Subject to the preferential rights of the Preferred Stock, if any, and paragraph B(4) of Article FOURTH, the holders of shares of Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation (the "Board of Directors"), out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.

4. Liquidation. Upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, holders of shares of Common Stock will be entitled to receive assets of the Corporation available for distribution to its stockholders in the manner described in paragraph B(3).

5. Increase or Decrease of Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

## B. PREFERRED STOCK

The Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

### 1. Voting.

1A. General. Except as otherwise required by the DGCL or this Amended and Restated Certificate of Incorporation, the Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all matters submitted to a vote of stockholders of the Corporation. Except as otherwise required by the DGCL or this Amended and Restated Certificate of Incorporation, each share of Preferred Stock shall entitle the holder thereof to one vote per share on each such action for each whole share of Common Stock into which each share of Preferred Stock is then convertible.

1B. Board Seats. Until the earlier of (i) the consummation of a Qualified Public Offering, or (ii) such time as less than 1,920,930 shares of Series B Stock remain outstanding (which number of shares shall be subject to equitable adjustment whenever there shall occur a stock split of, stock dividend on, reclassification of or other similar event with respect to the Series B Stock), the holders of the Series B Stock, voting separately as one class, shall be entitled to elect one (1) director of the Corporation (the "Series B Director"). Until the earlier of (i) the consummation of a Qualified Public Offering, or (ii) such time as less than 984,613 shares of Series A Stock remain outstanding (which number of shares shall be subject to equitable adjustment whenever there shall occur a stock split of, stock dividend on, reclassification of or other similar event with respect to the Series A Stock), the holders of the Series A Stock, voting separately as one class, shall be entitled to elect two (2) directors of the Corporation (the "Series A Directors," and together with the Series B Director, the "Preferred Directors"); provided, however, that on and after the date of any Series A Initiating Notice (as defined in subparagraph 6B), the number of directors which the holders of Series A Stock shall be entitled to elect, subject to and in accordance with the other provisions of this subparagraph 1C, shall be reduced to one (1). The Common Stock and Preferred Stock, voting together as one class on an as-converted basis, will elect the remaining directors of the Corporation.

## 2. Dividends.

2A. Participating Dividends. In the event the Board of Directors shall declare a dividend (other than a dividend payable in Common Stock) payable upon the then outstanding shares of the Common Stock of the Corporation, the Board of Directors shall declare at the same time a dividend upon the then outstanding shares of Preferred Stock, payable at the same time as the dividend paid on the Common Stock, in an amount equal to the amount of dividends per share of Preferred Stock as would have been payable on the largest number of whole shares of Common Stock if such share of Preferred Stock had been converted to Common Stock pursuant to the provisions of paragraph 5 hereof as of the record date for the determination of holders of Common Stock entitled to receive such dividends. All dividends declared upon the Preferred Stock pursuant to this subparagraph 2A shall be declared and paid pro rata per share. Notwithstanding the foregoing, but subject to paragraph B(4) of this Article Fourth, nothing contained in the foregoing shall prevent the Corporation from: (i) effecting a stock split or declaring or paying any dividend consisting of shares of any class of capital stock; or (ii) declaring and paying all accrued dividends on the Series A Stock or Series B Stock.

2B. Preferred Dividends. Subject to the provisions of law and this Amended and Restated Certificate of Incorporation, from and after the date of issuance of any shares of Series B Stock, the holders of such shares of the Series B Stock shall be entitled to receive, out of funds legally available therefor, when, as and if declared by the Board of Directors, cash dividends per share of Series B Stock at the rate per annum of nine percent (9%) of the Series B Liquidation Preference (the "Series B Dividends"). Series B Dividends shall accrue (but not compound) from day to day whether or not declared. Such dividends shall be payable only when, as and if declared by the Corporation's Board of Directors or as otherwise set forth herein, shall accumulate until paid and shall be extinguished upon conversion of the applicable share of Series B Stock into Common Stock. Subject to the provisions of law and this Amended and Restated Certificate of Incorporation, from and after the date of issuance of any shares of Series A Stock, the holders of such shares of the Series A Stock shall be entitled to receive, after the payment of Series B Dividends, out of funds legally available therefor, when, as and if declared by the Board of Directors, cash dividends per share of Series A Stock at the rate per annum of eleven percent (11%) of the Series A Liquidation Preference (the "Series A Dividends"). Series A Dividends shall accrue (but not compound) from day to day. Such dividends shall be payable only when, as and if declared by the Corporation's Board of Directors or as otherwise set forth herein, shall accumulate until paid and shall be extinguished upon conversion of the applicable share of Series A Stock into Common Stock.

## 3. Liquidation, Dissolution and Winding-up; Sale Events.

3A. Treatment of Series B Stock at Liquidation or Winding Up. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), the holders of shares of Series B Stock shall be entitled to receive, before any distribution or payment is made upon any Series A Stock, Common Stock or other stock ranking on liquidation junior to the Series B Stock, an amount per share equal to \$2.15 (which amount shall be subject to equitable adjustment whenever there shall occur a stock split of, stock dividend on, reclassification of or other similar event with respect to the Series B Stock) (as so adjusted from time to time, the "Series B Liquidation Preference") plus an amount equal to any Series B Dividends accrued but unpaid thereon, computed to the date payment thereof is made available. If upon such Liquidation Event, the assets to be distributed among the holders of Series B Stock shall be insufficient to pay the holders of Series B Stock the full amount distributable as set forth in the first sentence of this subparagraph 3A to which they shall be entitled, then the entire assets of the Corporation available for distribution to be so distributed shall be distributed ratably among the holders of Series B Stock.

3B. Treatment of Series A Stock at Liquidation or Winding Up. Upon a Liquidation Event, and after the distribution described in subparagraph 3A, the holders of shares of Series A Stock shall be entitled to receive, before any distribution or payment is made upon any Common Stock or other stock ranking on liquidation junior to the Series A Stock, an amount per share equal to \$1.422 (which amount shall be subject to equitable adjustment whenever there shall occur a stock split of, stock dividend on, reclassification of or other similar event with respect to the Series A Stock) (as so adjusted from time to time, the "Series A Liquidation Preference") plus an amount equal to any Series A Dividends accrued but unpaid thereon, computed to the date payment thereof is made available. If upon such Liquidation Event, and after the distribution described in subparagraph 3A, the assets to be distributed among the holders of Series A Stock shall be insufficient to pay the holders of Series A Stock the full amount distributable as set forth in the first sentence of subparagraph 3B to which they shall be entitled, then such assets of the Corporation legally available for distribution to the Series A Stock shall be distributed ratably among the holders of Series A Stock.

3C. Participation. Upon any such Liquidation Event, after the holders of Series B Stock and Series A Stock shall have been paid in full the foregoing preferential amounts to which they shall be entitled pursuant to subparagraphs 3A and 3B, or funds necessary for such payment shall have been set aside by the Corporation in trust for the account of holders of the Series B Stock and Series A Stock so as to be available for such payments, then the remaining assets of the Corporation available for distribution shall be distributed ratably among the holders of Common Stock and the Preferred Stock, with the holders of Preferred Stock deemed to hold that number of shares equal to the number of shares of Common Stock into which such shares of Preferred Stock are then convertible.

3D. Notice. Written notice of such Liquidation Event, stating a payment date and the place where said payments shall be made, shall be given by certified mail (return receipt requested), postage prepaid, or by facsimile to non-U.S. residents, not less than 20 days prior to the payment date stated therein, to the holders of record of Series A Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

3E. Sale Events. The Corporation shall not be a party to, or otherwise authorize or effect, a Sale Event (as hereinafter defined), unless, as a term thereof, the holders of the Preferred Stock shall be entitled to receive in connection therewith the entirety of the consideration payable to the holders of the capital stock of the Corporation pursuant to subparagraphs 3A, 3B and 3C in connection with such transaction as if such transaction were a Liquidation Event; provided, however, that the holders of a majority of the then outstanding shares of Series A Stock, voting as one class, and the holders of a majority of the then outstanding shares of Series B Stock, voting as one class, may waive the rights provided by this subparagraph 3E in connection with a transaction by giving written notice to the Corporation at least five (5) Business Days prior to the effective date of such transaction. For the purposes of this subparagraph 3E, a "Sale Event" shall mean: (i) consolidation or merger of the Corporation (except a consolidation or merger into a Subsidiary (as defined in paragraph 7 below) or a consolidation or merger solely for the purpose of changing the Corporation's jurisdiction of organization) in which the holders of the Corporation's voting stock outstanding immediately prior to the transaction do not in the aggregate hold at least fifty percent (50%) of the voting power of the capital stock of the surviving or resulting corporation (or if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation) outstanding immediately following the transaction in substantially the same proportions, or (ii) sale, transfer or exclusive license by the Corporation of all or substantially all its assets.

3F. Distributions of Property. Whenever the distribution provided for in this paragraph 3 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors.

4. Restrictions.

4A. Series A Stock Approval. In addition to any other vote required by the DGCL or this Amended and Restated Certificate of Incorporation, until the earlier of (i) consummation of a Qualified Public Offering, or (ii) such time as less than 492,307 shares of Series A Stock remain outstanding (which number of shares shall be subject to equitable adjustment whenever there shall occur a stock split of, stock dividend on, reclassification of or other similar event with respect to the Series A Stock), without the written consent of the holders of at least 67% (and 75% in the case of subparagraphs 4A(1), 4A(3) and 4A(11)) of the then outstanding shares of Series A Stock, given in writing or by a vote at a meeting, consenting or voting (as the case may be) separately as one class, the Corporation will not:

4A(1) Liquidation and Certain Transactions. Consent to, agree to consummate, or consummate any Liquidation Event, Sale Event or recapitalization or reorganization of the Corporation or merge or consolidate with any other entity;

4A(2) Sale of Assets. Sell, abandon, transfer or otherwise dispose of all or substantially all of its assets or grant an exclusive license or sell all or substantially all of the intellectual property of the Corporation;

4A(3) Charter and By-laws. Amend, alter or repeal any provision of its Certificate of Incorporation, as amended, or its By-laws;

4A(4) Authorization of Additional Stock. Create or authorize the creation of, or issue or authorize the issuance of, any additional class or series of shares of stock unless the same ranks junior to the Series A Stock in all respects (including without limitation, as to dividends, distribution of assets on the liquidation, dissolution or winding up of the Corporation, or redemption rights);

4A(5) Redemptions; Dividends. Purchase or redeem, or set aside any sums for the purchase or redemption of, or pay any dividend or make any distribution on, any shares of stock, other than (i) the redemption of any shares of Series A Stock or Series B Stock as required hereunder, (ii) the redemption of any shares of Common Stock pursuant to that certain Amended and Restated Stockholders Agreement dated on or about the date hereof, as may be amended from time to time (the "Stockholders Agreement"), or (iii) the repurchase of Common Stock, at the lower of cost or fair market value, from employees, advisors, officers, directors and consultants pursuant to vesting agreements approved by the Board of Directors or the Compensation Committee of the Board of Directors or in connection with the termination of the relationship between the Corporation and any such person or entity (this clause (iii), together with clauses (i) and (ii), the "Series A Permitted Redemptions");

4A(6) Indebtedness. Create, incur or authorize any new indebtedness for borrowed money (or guarantee the indebtedness of other third parties) in excess of \$1,500,000 in the aggregate, other than (i) trade payables incurred in the ordinary course of business consistent with past practice, (ii) indebtedness that is approved by the Board of Directors (including a majority of the Preferred Directors then in office (unless such Preferred Directors abstain from voting due to a conflict of interest)) and (iii) indebtedness incurred in connection with the Series A Permitted Redemptions;

4A(7) Changes to Authorized Capitalization. Increase or decrease the authorized number of shares of Common Stock or Series A Stock as provided for in this Amended and Restated Certificate of Incorporation;

4A(8) Nature of Business. Make any material change in the fundamental nature of the business of the Corporation as it is presently conducted or presently proposed to be conducted;

4A(9) Acquisitions. Acquire any other business or entity (whether by merger, stock purchase, asset purchase, exclusive license or otherwise) in a single transaction or a series of related transactions;

4A(10) Change in Control. Except pursuant to the Stockholders Agreement, authorize or enter into any transaction or series of related transactions in which the holder or holders of capital stock of the Corporation immediately prior to such transaction(s) will hold, immediately after such transaction(s), less than a majority of the aggregate voting power of the outstanding securities of the surviving entity;

4A(11) Board of Directors. Increase or decrease the authorized size of the Board of Directors; or

4A(12) Series A Stock Terms. Alter, modify, change or waive any right, preference or privilege of the Series A Stock set forth in this Amended and Restated Certificate of Incorporation.

4A(13) Subsidiaries. Authorize or permit the formation of any Subsidiary; or authorize or permit any Subsidiary to take any action described in subparagraph 4A(1), 4A(2), 4A(6), 4A(8), 4A(9) or 4A(10).

Notwithstanding the foregoing, after the date of any Series A Initiating Notice, no consent shall be required pursuant to subparagraph 4(A)(3), 4(A)(4) or 4(A)(7) above, and notwithstanding Section 242(b)(2) of the DGCL, no class vote of the Series A Stock shall be required, in each case, in order to create, authorize (including authorization of additional shares) or issue any class or series of stock which ranks junior to or pari passu with the Series A Stock in all respects ("Redemption Financing Stock") provided that the net proceeds from the sale of any such Redemption Financing Stock are promptly applied to the redemption of the Series A Stock and are sufficient to redeem at least seventy-five percent of the outstanding shares of the Series A Stock.

4B. Series B Stock Approval. In addition to any other vote required by the DGCL or this Amended and Restated Certificate of Incorporation, until the earlier of (i) consummation of a Qualified Public Offering, or (ii) such time as less than 1,920,930 shares of Series B Stock remain outstanding (which number of shares shall be subject to equitable adjustment whenever there shall occur a stock split of, stock dividend on, reclassification of or other similar event with respect to the Series B Stock), without the written consent of the holders of a majority of the then outstanding shares of Series B Stock, given in writing or by a vote at a meeting, consenting or voting (as the case may be) separately as one class, the Corporation will not (whether by amendment, merger, recapitalization or otherwise):

4B(1) Liquidation and Certain Transactions. Consent to, agree to consummate, or consummate any Liquidation Event, Sale Event, or recapitalization or reorganization of the Corporation or merge or consolidate with any other entity;

4B(2) Sale of Assets. Sell, abandon, transfer or otherwise dispose of all or substantially all of its assets or grant an exclusive license or sell all or substantially all of the intellectual property of the Corporation;

4B(3) Charter and By-laws. (i) amend, alter or repeal any provision of its Certificate of Incorporation, as amended, or its By-laws;

4B(4) Authorization of Additional Stock. Create or authorize the creation of, or issue or authorize the issuance of, any additional class or series of shares of stock, or reclassify any outstanding equity securities, unless the same ranks junior to the Series B Stock in all respects (including without limitation, as to dividends, distribution of assets on the liquidation, dissolution or winding up of the Corporation, or redemption rights);

4B(5) Redemptions; Dividends. Purchase or redeem, or set aside any sums for the purchase or redemption of, or pay any dividend or make any distribution on, any shares of stock, other than (i) the redemption of any shares of Series B Stock as required hereunder, (ii) the redemption of any shares of Common Stock pursuant to the Stockholders Agreement, or (iii) the repurchase of Common Stock, at the lower of cost or fair market value, from employees, advisors, officers, directors and consultants pursuant to vesting agreements approved by the Compensation Committee of the Board of Directors or in connection with the termination of the relationship between the Corporation and any such person or entity (this clause (iii), together with clauses (i) and (ii), the "Series B Permitted Redemptions," and together with the Series A Permitted Redemption, the "Permitted Redemptions");

4B(6) Indebtedness. Create, incur or authorize any additional indebtedness for borrowed money (or guarantee the indebtedness of other third parties) after the filing date of this Amended and Restated Certificate of Incorporation in excess of \$1,500,000 in the aggregate, other than (i) trade payables incurred in the ordinary course of business consistent with past practice, (ii) indebtedness that is approved by the Board of Directors (including a Series B Director if then in office (unless such Series B Director abstains from voting due to a conflict of interest) and (iii) indebtedness incurred in connection with the redemptions of Series B Stock, provided that all outstanding Series B Stock is redeemed promptly following the incurrence of such indebtedness;

4B(7) Changes to Authorized Capitalization. Increase or decrease the authorized number of shares of Common Stock or Series B Stock as provided for in this Amended and Restated Certificate of Incorporation;

4B(8) Nature of Business. Make any material change in the fundamental nature of the business of the Corporation as it is presently conducted or presently proposed to be conducted;

4B(9) Acquisitions. Acquire any other business or entity (whether by merger, stock purchase, asset purchase, exclusive license or otherwise) in a single transaction or a series of related transactions;

4B(10) Change in Control. Authorize or enter into any transaction or series of related transactions in which the holder or holders authorize or enter into any transaction or series of related transactions in which the holder or holders of capital stock of the Corporation immediately prior to such transaction(s) will hold, immediately after such transaction(s), less than a majority of the aggregate voting power of the outstanding securities of the surviving entity;

4B(11) Board of Directors. Increase or decrease the authorized size of the Board of Directors; or

4B(12) Series B Stock Terms. Alter, modify, change or waive any right, preference or privilege of the Series B Stock set forth in this Amended and Restated Certificate of Incorporation.

4B(13) Subsidiaries. Authorize or permit the formation of any Subsidiary; or authorize or permit any Subsidiary to take any action described in subparagraph 4B(1), 4B(2), 4B(6), 4B(8), 4B(9) or 4B(10).

Notwithstanding the foregoing, after the date of any Series B Initiating Notice, no consent shall be required pursuant to subparagraph 4(B)(3), 4(B)(4) or 4(B)(7) above, and notwithstanding Section 242(b)(2) of the DGCL, no class vote of the Series B Stock shall be required, in each case, in order to create, authorize (including authorization of additional shares) or issue any class or series of stock which ranks junior to or pari passu with the Series B Stock in all respects ("Redemption Financing Stock") provided that the net proceeds from the sale of any such Redemption Financing Stock are promptly applied to the redemption of the Series B Stock and are sufficient to redeem at least seventy-five percent of the outstanding shares of the Series B Stock.

4C. Preferred Director Approval. In addition to any other vote required by the DGCL or this Amended and Restated Certificate of Incorporation, until the earlier of (i) consummation of a Qualified Public Offering, or (ii) such time as less than 948,613 shares of Series A Stock remain outstanding (with respect to the consent or vote of the Series A Director) or less than 1,920,930 shares of Series B Stock remain outstanding (with respect to the consent or vote of the Series B Director), without the receipt of written consent (or a vote in favor of at any meeting of the Board of Directors) of at least one of the Series A Directors and the Series B Director (unless the applicable Preferred Director abstains from voting due to a conflict of interest or is no longer serving as a director), the Corporation will not:

4C(1) Intellectual Property. Sell, transfer, license or further encumber any of the Corporation's intellectual property or other technology (other than the granting of licenses in the ordinary course of business);

4C(2) Annual Budget. Approve the Corporation's annual budget or any material amendments thereto;

4C(3) Officer Appointments. Appoint or terminate the Corporation's Chief Executive Officer or Chief Operating Officer;

4C(4) Insurance. Knowingly discontinue or amend in a manner to materially reduce coverage (i) the terms of any D&O or errors and omissions insurance plan or policy, or (ii) any other material insurance plan or policy, in each case, without a replacement which materially covers the same set of risks; or

4C(5) Affiliated Transactions. Authorize, enter into, or modify or amend the terms of, any transaction or series of related transactions with (a) any stockholder, director, officer, or employee of the Corporation (other than the Permitted Redemptions, any employment arrangements with base compensation not exceeding \$150,000 on an annual basis, and any standard employment benefits), (b) any person known by the Company to be a member of the immediate family of any person referenced in the immediately preceding clause (a), or (c) any corporation or other entity known by the Company to be controlled by any one or more persons referenced in the



immediately preceding clauses (a) and (b), unless such transaction or series of transactions (I) involve or involves an amount less than \$10,000 per annum, (II) is or are approved by the Board of Directors or the Compensation Committee of the Board of Directors, (III) has or have been negotiated and entered into consistent with a Corporation policy pertaining to affiliated transactions which policy has been approved by the Board of Directors or (IV) has or have been negotiated and entered into in good faith, on an arm's-length basis and with fair market terms and conditions.

4D. Board Approval. In addition to any other vote required by the DGCL or this Amended and Restated Certificate of Incorporation, until the earlier of (i) consummation of a Qualified Public Offering, or (ii) such time as less than 1,920,930 shares of Preferred Stock remain outstanding, and without the receipt of written consent (or a vote in favor of at any meeting of the Board of Directors) of at least a majority of the Board of Directors, the Corporation will not:

4D(1) Most Favored Nation. Grant any material most favored nation provision to a third party.

4D(2) Indebtedness. Incur indebtedness or make any capital expenditure in excess of \$250,000 which is not set forth in the Company's annual budget approved by the Board of Directors pursuant to subparagraph 4C(2).

4D(3) Sale Event. Enter into any agreement that would result in a Sale Event

5. Conversion of Preferred Stock. The holders of shares of Preferred Stock shall have the following conversion rights:

5A. Right to Convert.

5A(1) Series A Stock Conversion. Subject to the terms and conditions of this paragraph 5, the holder of any share or shares of Series A Stock shall have the right, at its option at any time, to convert any such shares of Series A Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series A Stock to be converted by the Series A Liquidation Preference and (ii) dividing the result by the conversion price of \$1.422 per share, or in case an adjustment of such price has taken place pursuant to the further provisions of this paragraph 5, then by the conversion price as last adjusted and in effect at the date any share or shares of Series A Stock are converted (such price, or such price as last adjusted, being referred to as the "Series A Conversion Price"). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Series A Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series A Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. If any stock certificate to be delivered for conversion shall have been lost, stolen, defaced or destroyed, such holder shall make, and the Corporation shall accept in lieu of such lost stock certificate, an affidavit of that fact by the holder claiming such stock certificate to be lost, stolen, defaced or destroyed together with an agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft, defacement or destruction of such certificate. Notwithstanding any other provisions hereof, if a conversion of Series A Stock is to be made in connection with any transaction affecting the Corporation, the conversion of any shares of Series A Stock, may, at the election of the holder thereof, be conditioned upon the consummation of such

transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated, subject in all events to the terms hereof applicable to such transaction.

5A(2) Series B Stock Conversion. Subject to the terms and conditions of this paragraph 5, the holder of any share or shares of Series B Stock shall have the right, at its option at any time, to convert any such shares of Series B Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Series B Stock to be converted by the Series B Liquidation Preference and (ii) dividing the result by the conversion price of \$2.15 per share, or in case an adjustment of such price has taken place pursuant to the further provisions of this paragraph 5, then by the conversion price as last adjusted and in effect at the date any share or shares of Series B Stock are converted (such price, or such price as last adjusted, being referred to as the "Series B Conversion Price"). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Series B Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Series B Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. If any stock certificate to be delivered for conversion shall have been lost, stolen, defaced or destroyed, such holder shall make, and the Corporation shall accept in lieu of such lost stock certificate, an affidavit of that fact by the holder claiming such stock certificate to be lost, stolen, defaced or destroyed together with an agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft, defacement or destruction of such certificate. Notwithstanding any other provisions hereof, if a conversion of Series B Stock is to be made in connection with any transaction affecting the Corporation, the conversion of any shares of Series B Stock, may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated, subject in all events to the terms hereof applicable to such transaction.

5B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in subparagraph 5A(1) or 5A(2), as applicable, and surrender of the certificate or certificates for the share or shares of Series A Stock or Series B Stock, respectively, to be converted or an affidavit of loss therefor, as the case may be, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Series A Stock or Series B Stock, as applicable. To the extent permitted by law, such conversion shall be deemed to have been effected and the Series A Conversion Price and Series B Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares or an affidavit of loss therefor shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Series A Stock or Series B Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

5C. Fractional Shares; Partial Conversion. No fractional shares shall be issued upon conversion of Preferred Stock into Common Stock. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 5B exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If

any fractional share of Common Stock would, except for the provisions of the first sentence of this subparagraph 5C, be delivered upon such conversion after aggregating all such fractional shares otherwise issuable to such stockholder, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Preferred Stock for conversion in lieu of such fractional share an amount in cash equal to the current market fair market value of such fractional share as determined in good faith by the Board of Directors.

5D. Adjustment of Series A Conversion Price and Series B Conversion Price Upon Issuance of Common Stock. Except as provided in subparagraphs 5E and 5F, if and whenever after the date of filing of this Amended and Restated Certificate of Incorporation the Corporation shall issue or sell, or is, in accordance with subparagraphs 5D(1) through 5D(7), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Series A Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Series A Conversion Price shall be reduced to the price (calculated to the nearest one-hundredth of a cent (\$0.0001)) determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue (including, for this purpose, shares of Common Stock issuable, directly or indirectly, upon conversion, exercise and/or exchange of any outstanding Convertible Securities and Options (as defined below)) or sale multiplied by the then existing Series A Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) an amount equal to the sum of (a) the total number of shares of Common Stock outstanding immediately prior to such issue (including, for this purpose, shares of Common Stock issuable, directly or indirectly, upon conversion, exercise and/or exchange of any outstanding Convertible Securities and Options) or sale and (b) the total number of shares of Common Stock issuable in such issue or sale; provided, however, that the foregoing provisions of this sentence shall not apply to, and no adjustments shall be made hereunder for, any issuances or deemed issuances occurring on or after the date of any Series A Initiating Notice (as defined in subparagraph 6B). Except as provided in subparagraphs 5E and 5F, if and whenever after the date of filing of this Amended and Restated Certificate of Incorporation the Corporation shall issue or sell, or is, in accordance with subparagraphs 5D(1) through 5D(7), deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Series B Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Series B Conversion Price shall be reduced to the price (calculated to the nearest one-hundredth of a cent (\$0.0001)) determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue (including, for this purpose, shares of Common Stock issuable, directly or indirectly, upon conversion, exercise and/or exchange of any outstanding Convertible Securities and Options (as defined below)) or sale multiplied by the then existing Series B Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) an amount equal to the sum of (a) the total number of shares of Common Stock outstanding immediately prior to such issue (including, for this purpose, shares of Common Stock issuable, directly or indirectly, upon conversion, exercise and/or exchange of any outstanding Convertible Securities and Options) or sale and (b) the total number of shares of Common Stock issuable in such issue or sale.

For purposes of this subparagraph 5D, the following subparagraphs 5D(1) to 5D(8) shall also be applicable:

5D(1) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for

which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Series A Conversion Price and/or the Series B Conversion Price, as the case may be, in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 5D(3), no adjustment of the Series A Conversion Price or Series B Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

5D(2) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Series A Conversion Price and/or the Series B Conversion Price, as the case may be, in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, *provided that* (a) except as otherwise provided in subparagraph 5D(3), no adjustment of the Series A Conversion Price and/or the Series B Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Series A Conversion Price and/or Series B Conversion Price have been or are to be made pursuant to other provisions of this subparagraph 5D, no further adjustment of the Series A Conversion Price and/or Series B Conversion Price shall be made by reason of such issue or sale.

5D(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the exercise price provided for in any Option referred to in subparagraph 5D(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 5D(1) or 5D(2), or the rate at which Convertible Securities referred to in subparagraph 5D(1) or 5D(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Series A Conversion Price

and the Series B Conversion Price in effect at the time of such event shall forthwith be readjusted to the Series A Conversion Price and the Series B Conversion Price (calculated to the nearest one hundredth of one cent (\$.0001)) which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the expiration of any such Option or the termination of any such right to convert or exchange such Convertible Securities, the Series A Conversion Price and the Series B Conversion Price then in effect hereunder shall forthwith be increased to the Series A Conversion Price and the Series B Conversion Price (calculated to the nearest one hundredth of one cent (\$.0001)) which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

5D(4) Stock Dividends. In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock (except for the issue of stock dividends or distributions upon the outstanding Common Stock for which adjustment is made pursuant to subparagraph 5F), Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

5D(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors.

5D(6) Record Date. In case the Corporation shall (x) take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities and (y) pay such dividend, make such other distribution or issue such securities, then such record date retroactively shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

5D(7) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this subparagraph 5D.

5D(8) No Adjustment of Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance or deemed issuance of any

shares of Common Stock if the Corporation receives written notice from the holders of at least 67% of the then outstanding shares of Series A Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such shares of Common Stock. No adjustment in the Series B Conversion Price shall be made as the result of the issuance or deemed issuance of any shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series B Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such shares of Common Stock.

5E. Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Series A Conversion Price or Series B Conversion Price in the case of the issuance of (i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series A Stock, (ii) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series B Stock, (iii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by subparagraphs 5F or 5G, (iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities (including without limitation the Series A Stock and Series B Stock), in each case provided such issuance is pursuant to the terms of such Option or Convertible Security, (v) Reserved Employee Shares, (vi) Common Stock issued after the initial issuance of Series B Stock in connection with a Qualified Public Offering, (vii) Common Stock (or Options or Convertible Securities) issued or issuable pursuant to technology licensing, corporate partnering, joint venture, equipment leasing, bank financing or similar transactions approved by the Board of Directors (including a Series A Director and the Series B Director if then in office, unless such Preferred Director abstains from voting due to a conflict of interest) in an amount not to exceed 2.5% of the outstanding Common Stock, determined on a fully-diluted basis and not principally for equity financing purposes, (viii) securities of the Corporation issuable in connection with business acquisitions by the Corporation (whether by merger or asset purchase or exchange of stock) approved by the Board of Directors (including a Series A Director and the Series B Director if then in office, unless such Preferred Director abstains from voting due to a conflict of interest), (ix) that certain Amended and Restated Secured Convertible Promissory Note being issued by the Corporation to the New Jersey Economic Development Authority on or about the date of filing of this Amended and Restated Certificate of Incorporation and the securities issuable upon conversion thereof and (x) that certain Amended and Restated Warrant to Purchase 125,000 Shares of Common Stock being issued by the Corporation to the New Jersey Economic Development Authority on or about the date of filing of this Amended and Restated Certificate of Incorporation and the securities issuable upon exercise thereof (collectively, the "Excluded Issuances").

5F. Subdivision or Combination of Common Stock. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series A Conversion Price and Series B Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Series A Conversion Price and Series B Conversion Price in effect immediately prior to such combination shall be proportionately increased.

5G. Reorganization or Reclassification. If any capital reorganization, reclassification, recapitalization, consolidation, merger, sale of all or substantially all of the Corporation's assets or other similar transaction which is not a Sale Event (unless the provisions of subparagraph 3E have been waived) (any such transaction being referred to herein as an "Organic Change") shall be effected in such a way that holders of Common Stock shall be entitled to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, then,

as a condition of such Organic Change, lawful and adequate provisions shall be made whereby each holder of a share or shares of Preferred Stock which remains outstanding thereafter, if any, shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of or in addition to, as the case may be, the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Preferred Stock such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such Organic Change not taken place, and in any case of a reorganization or reclassification only appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Series A Conversion Price and Series B Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

5H. Notice of Adjustment. Upon any adjustment of the Series A Conversion Price or Series B Conversion Price, then and in each such case the Corporation shall give written notice thereof, by certified mail (return receipt requested), postage prepaid, or by facsimile transmission, addressed to each holder of shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Series A Conversion Price or Series B Conversion Price, as applicable, resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

5I. Other Notices. In case at any time:

- (1) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;
- (2) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;
- (3) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into, or a sale of all or substantially all its assets to, another entity or entities; or
- (4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, the Corporation shall give, by certified mail (return receipt requested), postage prepaid, or by facsimile transmission, addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 10 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up and (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 10 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

5J. Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be required to assure that the par value per share of the Common Stock is at all times equal to or less than the Series A Conversion Price and the Series B Conversion Price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed.

5K. No Reissuance of Preferred Stock. Shares of Preferred Stock which are converted into shares of Common Stock as provided herein or reacquired by the Corporation shall not be reissued.

5L. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Preferred Stock which is being converted.

5M. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any shares of Preferred Stock or any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock, in any manner which interferes with the timely conversion of such Preferred Stock, except as may otherwise be required to comply with applicable securities laws and except that upon any Liquidation Event or Sale Event the right of conversion shall terminate at the close of business on the Business Day fixed for payment of the amounts distributable or payable on the Preferred Stock.

5N. Mandatory Conversion. All outstanding shares of Preferred Stock shall automatically convert to shares of Common Stock if at any time (1) the holders of a majority the outstanding Series A Stock and the holders of the majority of the Series B Stock consent to such conversion (a "Conversion Election"), or (2) the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which (i) the aggregate gross proceeds (before deduction of underwriters' commissions and other offering expenses) from such offering to the Corporation shall be at least \$35,000,000 and (ii) the price paid by the public for such shares shall reflect a pre-offering valuation of the Corporation of at least \$130,000,000 (a "Qualified Public Offering"). Effective upon the Conversion Election or the closing of the sale of such shares by the Corporation pursuant to such Qualified Public Offering, all outstanding shares of Preferred Stock shall automatically convert into shares of Common Stock in accordance with subparagraph 5A (such shares being referred to herein as "Conversion Shares"). Upon the consummation of a Qualified Public Offering, in addition to the Conversion Shares that holders of Preferred Stock are entitled to receive, the Corporation shall, unless prohibited by applicable law, issue to each holder of Preferred Stock being so converted (each, an "Underlying Share") an aggregate number of shares of Common Stock equal to the quotient obtained by dividing (a) in the case of Series A Stock, (x) the sum of all Series A Dividends accrued but unpaid thereon (the "Series A QPO Conversion Amount") from the date of issuance of such Underlying Share until the date that it is converted into Common Stock by (y) the Series A Conversion Price then in effect, and (b) in the case of Series B Stock, (A) the sum of all Series B Dividends accrued but unpaid thereon (the "Series B QPO Conversion Amount") from the date of issuance of such Underlying Share until the



date that it is converted into Common Stock by (B) the Series B Conversion Price then in effect; *provided, however*, that a holder of Preferred Stock shall have the right to elect, by giving the Corporation written notice thereof at least five (5) Business Days prior to any Qualified Public Offering, to receive, unless prohibited by applicable law, the Series A QPO Conversion Amount or Series B QPO Conversion Amount, as the case may be, in the form of cash (rather than in shares of Common Stock).

5O. Conversion Upon Liquidation Event or Sale Event.

5O(1) Series A Stock Conversion. In the event a holder of Series A Stock elects to convert shares of Series A Stock into shares of Common Stock pursuant to subparagraph 5A(1) hereof in connection with, and subject to consummation of, a Liquidation Event or Sale Event, then upon consummation of such Liquidation Event or Sale Event, in addition to the shares of Common Stock such holder is entitled to receive upon conversion of the shares of Series A Stock, the Corporation shall, unless prohibited by applicable law, pay to such holder an amount in cash per share of Series A Stock so converted equal to all Series A Dividends accrued but unpaid thereon from the date of issuance of such share of Series A Stock until the date that it is converted into Common Stock.

5O(2) Series B Stock Conversion. In the event a holder of Series B Stock elects to convert shares of Series B Stock into shares of Common Stock pursuant to subparagraph 5A(2) hereof in connection with, and subject to consummation of, a Liquidation Event or Sale Event, then upon consummation of such Liquidation Event or Sale Event, in addition to the shares of Common Stock such holder is entitled to receive upon conversion of the shares of Series B Stock, the Corporation shall, unless prohibited by applicable law, pay to such holder an amount in cash per share of Series B Stock so converted equal to all Series B Dividends accrued but unpaid thereon from the date of issuance of such share of Series B Stock until the date that it is converted into Common Stock.

6. Redemption. The shares of Preferred Stock shall be redeemed as follows:

6A Series B Stock Optional Redemption.

6A(1) Series B Stock Redemption. With the approval of the holders of at least a majority of the then outstanding shares of Series B Stock, one or more holders of shares of Series B Stock may, by giving notice (the "Series B Initiating Notice") to the Corporation at any time after June 13, 2012 require the Corporation to redeem all of the outstanding shares of Series B Stock in eight installments, with one-eighth of the shares of Series B Stock redeemed on the First Series B Redemption Date (as defined below), and one-eighth of the shares of Series B Stock redeemed on a quarterly basis on the same day of the month as the First Series B Redemption Date every three months thereafter (each, including the First Series B Redemption Date, a "Series B Redemption Date"); *provided, however*, that the Corporation may, at its option and in its discretion, accelerate the redemption of the Series B Stock and redeem all or any such shares of Series B Stock prior to any scheduled Series B Redemption Date, in which case the Corporation shall give the holders of the Series B Stock a Series B Redemption Notice specifying the accelerated date for redemption and the shares to be so redeemed. Upon receipt of the Series B Initiating Notice, the Corporation will so notify all other persons holding Series B Stock. After receipt of the Series B Initiating Notice, the Corporation shall fix the first date for redemption (the "First Series B Redemption Date"), *provided that* such First Series B Redemption Date shall occur within 90 days after receipt of the Series B Initiating Notice. All holders of Series B Stock shall deliver to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series B Stock or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for all Series B Stock duly endorsed for transfer to the Corporation (if required by it) on or before the First Series B Redemption Date.

6A(2) Redemption Price and Payment. The Series B Stock to be redeemed on the applicable Series B Redemption Date shall be redeemed by paying for each share, in the manner provided below, an amount equal to the greater of (a) the sum of the Series B Liquidation Preference plus an amount equal to all accrued but unpaid Series B Dividends on such share (whether or not declared) from the date of issuance of such share of Series B Stock until the date payment is made available or (b) the Fair Market Value (as defined in Paragraph 7 below) of such share of Series B Stock as of a date no more than 60 days prior to the Series B Redemption Date (the greater of such amounts being referred to hereinafter as the "Series B Redemption Price"). Such payment for the shares of Series B Stock to be redeemed on a given Series B Redemption Date shall be made in full on each such Series B Redemption Date to the holders entitled thereto.

6A(3) Redemption Mechanics. At least 20 but not more than 30 days prior to each Series B Redemption Date, written notice (the "Series B Redemption Notice") shall be given by the Corporation by certified mail (return receipt requested), postage prepaid, overnight delivery, personal delivery or facsimile transmission, to each holder of record (at the close of business on the Business Day next preceding the day on which the Series B Redemption Notice is given) of shares of Series B Stock notifying such holder of the redemption and specifying the Series B Redemption Price, the Series B Redemption Date and the place where said Series B Redemption Price shall be payable. The Series B Redemption Notice shall be addressed to each holder at his address as shown by the records of the Corporation. From and after a Series B Redemption Date, unless there shall have been a default in the payment of the Series B Redemption Price, all rights of holders of shares of Series B Stock being redeemed on such Series B Redemption Date (except the right to receive the Series B Redemption Price) shall cease with respect to such shares of stock (regardless of whether and when the stock certificates are tendered to the Corporation in accordance with subparagraph 6A(1) above), and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purposes whatsoever. If the funds of the Corporation legally available for redemption of shares of Series B Stock on a Series B Redemption Date are insufficient to redeem the total number of outstanding shares of Series B Stock to be redeemed on such Series B Redemption Date, the holders of shares of Series B Stock shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. The shares of Series B Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series B Stock, such funds will be used, no later than the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

#### 6B Series A Stock Optional Redemption.

6B(1) Series A Stock Redemption. With the approval of the holders of at least 80% of the then outstanding shares of Series A Stock, one or more holders of shares of Series A Stock may, by giving notice (the "Series A Initiating Notice"; and each Series B Initiating Notice and Series A Initiating Notice an "Initiating Notice") to the Corporation at any time after the later to occur of (a) the redemption in full of all outstanding shares of Series B Stock or (b) June 13, 2012 require the Corporation to redeem all of the outstanding shares of Series A Stock in eight installments, with one-eighth of the shares of Series A Stock redeemed on the First Redemption Date (as defined below), and one-eighth of the shares of Series A Stock redeemed on a quarterly basis on the same day of the month as the First Series A Redemption Date every three months thereafter (each, including the First Series A Redemption Date, a "Series A Redemption Date"); provided, however, that the Corporation may, at its option and in its discretion, accelerate the redemption of the Series A Stock and redeem all or any such shares of Series A Stock prior to any scheduled Series A Redemption Date, in which case the Corporation shall

give the holders of the Series A Stock a Series A Redemption Notice specifying the accelerated date for redemption and the shares to be so redeemed. Upon receipt of the Series A Initiating Notice, the Corporation will so notify all other persons holding Series A Stock. After receipt of the Series A Initiating Notice, the Corporation shall fix the first date for redemption (the "First Series A Redemption Date"), provided that such First Series A Redemption Date shall occur within 90 days after receipt of the Series A Initiating Notice. All holders of Series A Stock shall deliver to the Corporation during regular business hours, at the office of any transfer agent of the Corporation for the Series A Stock or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for all Series A Stock duly endorsed for transfer to the Corporation (if required by it) on or before the First Series A Redemption Date.

6B(2) Redemption Price and Payment. The Series A Stock to be redeemed on the applicable Series A Redemption Date shall be redeemed by paying for each share, in the manner provided below, an amount equal to the greater of (a) the sum of the Series A Liquidation Preference plus an amount equal to all accrued but unpaid Series A Dividends on such share (whether or not declared) from the date of issuance of such share of Series A Stock until the date payment is made available, or (b) the Fair Market Value (as defined in paragraph 7 below) of such share of Series A Stock as of a date no more than 60 days prior to the First Series A Redemption Date (the greater of such amounts being referred to hereinafter as the "Series A Redemption Price"). Such payment for the shares of Series A Stock to be redeemed on a given Series A Redemption Date shall be made in full on each such Series A Redemption Date to the holders entitled thereto.

6B(3) Redemption Mechanics. At least 20 but not more than 30 days prior to each Series A Redemption Date, written notice (the "Series A Redemption Notice") shall be given by the Corporation by certified mail (return receipt requested), postage prepaid, overnight delivery, personal delivery, electronic mail or facsimile transmission, to each holder of record (at the close of business on the Business Day next preceding the day on which the Series A Redemption Notice is given) of shares of Series A Stock notifying such holder of the redemption and specifying the Series A Redemption Price, the Series A Redemption Date and the place where said Series A Redemption Price shall be payable. The Series A Redemption Notice shall be addressed to each holder at his address as shown by the records of the Corporation. From and after a Series A Redemption Date, unless there shall have been a default in the payment of the Series A Redemption Price, all rights of holders of shares of Series A Stock being redeemed on such Series A Redemption Date (except the right to receive the Series A Redemption Price) shall cease with respect to such shares of stock (regardless of whether and when the stock certificates are tendered to the Corporation in accordance with subparagraph 6B(1) above), and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purposes whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Stock on a Series A Redemption Date are insufficient to redeem the total number of outstanding shares of Series A Stock to be redeemed on such Series A Redemption Date, after all payments due to the holders of Series B Stock pursuant to subparagraph 6A have been paid and satisfied in full, the holders of shares of Series A Stock shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. The shares of Series A Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Stock, after all payments due to the holders of Series B Stock pursuant to subparagraph 6A have been paid and satisfied in full, such funds will be used, no later than the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

6C. Redeemed or Otherwise Acquired Shares to be Retired. Any shares of Preferred Stock redeemed pursuant to this paragraph 6 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstances be reissued; and the Corporation shall from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Preferred Stock.

6D. Remedies.

6D(1) Series B Stock Remedies. If the Corporation has not paid the aggregate amount of the Series B Redemption Price payable on the Series B Redemption Date, then in addition to any other remedies available to the holders of Series B Stock, until such time as the Series B Redemption Price for each share of Series B Stock to be redeemed on the Series B Redemption Date has been paid in full, the rate at which the Series B Dividends accrue on such shares of Series B Stock which were to have been redeemed on the Series B Redemption Date and which remain outstanding shall be increased to eleven and one half percent (11.5%) per annum until such shares are redeemed;

6D(2) Series A Stock Remedies; Subordination. If the Corporation has not paid the aggregate amount of the Series A Redemption Price payable on any Series A Redemption Date, then in addition to any other remedies available to the holders of Series A Stock, until such time as the Series A Redemption Price for each share of Series A Stock to be redeemed on such Series A Redemption Date has been paid in full, the rate at which the Series A Dividends accrue on such shares of Series A Stock which were to have been redeemed on such Series A Redemption Date and which remain outstanding shall be increased to fourteen percent (14%) per annum until such shares are redeemed; *provided, however,* that the remedies specified in this subparagraph 6D(2) shall be junior and subordinated to, all remedies that the holders of Series B Stock may have (whether or not exercised) in respect of the payment of the Series B Redemption Price.

7. Definitions. As used herein, the following terms shall have the following meanings:

(a) The term "Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks located in the State of New Jersey are authorized or required to be closed.

(b) The term "Fair Market Value" shall mean an amount equal to the fair market value of a share of Series A Stock or Series B Stock (giving effect to the value of the rights and preferences of such shares as herein provided), as applicable, determined by an investment banking firm or independent appraiser chosen by the Corporation and approved by a majority of the members of the Board of Directors (which majority shall include a Series A Director in the case of Series A Stock and the Series B Director in the case of Series B Stock, in each case, if then in office) calculating such value using customary valuation methodology (giving effect to the value of the rights and preferences of such shares as herein provided). In all events, the fees and expenses of any such investment banking firm or independent appraiser shall be paid by the Corporation.

(c) The term "Original Common Holders" shall mean Rick Kushel, Mitchell Koval, Andrew Koval, Lou Koval and any family members of such persons, any trusts or family partnerships for the benefit of such persons or such family members, or any limited liability companies of which such persons are the only members. For purposes hereof, "family members" shall mean any spouse of such person and any sibling or lineal ancestor or descendant of such person, whether by marriage, natural or adopted.

(d) The term "Reserved Employee Shares" shall mean shares of Common Stock (or Options or Convertible Securities therefor) not to exceed an aggregate of 386,612 underlying shares (which number of shares shall be subject to equitable adjustment whenever there shall occur a stock split of, stock dividend on, reclassification of or other similar event with respect to the Common Stock) of Common Stock, or such greater number of shares as approved from time to time by the vote or written consent of the Board of Directors (including a Series A Director and the Series B Director, in each case, if then in office), issued or issuable to directors, officers, employees, advisors or consultants of the Corporation in connection with stock plans or other equity compensation plans approved by the Board of Directors.

(e) The term "Subsidiary" shall mean any corporation, partnership, trust or other entity of which the Corporation and/or any of its other subsidiaries directly or indirectly owns at the time a majority of the voting power of the outstanding shares (regardless of class of equity security) of such corporation, partnership, trust or other entity.

**FIFTH:** Unless and except to the extent that the by-laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

**SIXTH:** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, subject to the provisions of paragraph B(4) of Article Fourth, the Board of Directors is expressly authorized to make, amend, alter, change or repeal the by-laws of the Corporation.

**SEVENTH:** The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board of Directors.

**EIGHTH:** A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

**NINTH:** The Corporation shall indemnify its directors and officers in their capacities as such 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 and 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 persons unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The Corporation shall also pay the expenses incurred by any such person in defending or otherwise participating in any proceeding in advance of its final disposition.

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 Ninth to directors and officers of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Article Ninth shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the by-laws of the Corporation, any statute,

agreement, vote of the stockholders of the Corporation or disinterested directors of the Corporation or otherwise.

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

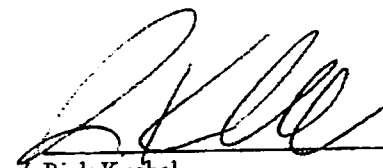
**TENTH:** Subject to the provisions of paragraph B(4) of Article Fourth, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Amended and Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article.

**ELEVENTH:** Subject to the rights of the holders of any series of Preferred Stock, any vote or votes authorizing liquidation of the Corporation or proceedings for its dissolution may provide, subject to the rights of creditors and the rights expressly provided for particular classes or series of capital stock, for the distribution among the stockholders of the Corporation of the assets of the Corporation as provided herein, wholly or in part or in kind, whether such assets be in cash or other property, and may authorize the Board of Directors to determine the valuation of the different assets of the Corporation for the purpose of such liquidation and may divide or authorize the Board of Directors to divide such assets or any part thereof among the stockholders of the Corporation, in such manner that every stockholder entitled thereto will receive an appropriate amount in value (determined as provided herein) of cash or property of the Corporation upon such liquidation or dissolution even though each such stockholder may not receive a strictly proportionate part of each such asset.

**TWELFTH:** Stockholders of the Corporation shall not have the right to cumulate their votes for the election of directors of the Corporation.

**[SIGNATURE ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the undersigned has signed this Amended and Restated Certificate of Incorporation on this 13<sup>th</sup> day of June 2007.

  
Rick Kushel  
Chief Executive Officer