

**FIFTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
CORTHERA, INC.**

Corthera, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), certifies that:

A. The name of the Corporation is Corthera, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 28, 2002 originally under the name "BAS Medical, Inc."

B. This Fifth Amended and Restated Certificate of Incorporation (the "**Restated Certificate**") was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation's current Amended and Restated Certificate of Incorporation.

C. The text of the Corporation's current Amended and Restated Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Corthera, Inc. has caused this Restated Certificate to be signed by Stan Abel, a duly authorized officer of the Corporation, on October 30, 2008.

/s/ Stan Abel

Stan Abel,
President and Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of the corporation is Corthera, Inc. (the "**Corporation**").

ARTICLE II

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

ARTICLE III

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE IV

Effective on the date this Restated Certificate is filed with the Delaware Secretary of State (the "**Effective Date**"), the total number of shares of stock that the Corporation shall have authority to issue is 119,746,621, consisting of 70,000,000 shares of Common Stock, \$0.0001 par value per share, and 49,746,621 shares of Preferred Stock, \$0.0001 par value per share, of which 4,125,000 shares of the Preferred Stock are hereby designated Series A Preferred Stock (the "**Series A Preferred**"), 5,621,621 shares of the Preferred Stock are hereby designated Series B Preferred Stock (the "**Series B Preferred**"), and 40,000,000 shares of the Preferred Stock are hereby designated Series C Preferred Stock (the "**Series C Preferred**").

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. **Definitions.** For purposes of this ARTICLE V, the following definitions shall apply:

- (a) "**Board**" means the Corporation's board of directors.
- (b) "**Conversion Price**" shall mean \$1.00 per share for the Series A Preferred, \$1.85 per share for the Series B Preferred, and \$0.92 per share for the Series C Preferred (each subject to adjustment from time to time for Recapitalizations and issuances of certain Additional Shares of Common, as set forth elsewhere herein).
- (c) "**Convertible Securities**" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.
- (d) "**Corporation**" shall mean Corthera, Inc.

(e) **"Distribution"** shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise (other than dividends on Common Stock payable in Common Stock) or the purchase or redemption of shares of the Corporation for cash or property other than the following Board approved events: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements approved by the Board and providing for the right of said repurchase at a price no greater than the original purchase price; (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements approved by the Board and providing for such right; (iii) repurchase of capital stock of the Corporation approved by the Board and in connection with the settlement of disputes with any stockholder approved by the Board; and (iv) any other repurchase or redemption of the Corporation's capital stock approved by the Board and the holders of Preferred Stock pursuant to Section 6.

(f) **"Dividend Rate"** shall mean an annual rate of eight percent (8%) of the Original Issue Price per share for the Series A Preferred, Series B Preferred, and Series C Preferred (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(g) **"Liquidation Preference"** shall mean \$1.00 per share for the Series A Preferred, \$1.85 per share for the Series B Preferred, and \$0.92 per share for the Series C Preferred (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(h) **"Options"** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(i) **"Original Issue Price"** shall mean \$1.00 per share for the Series A Preferred, \$1.85 per share for the Series B Preferred, and \$0.92 per share for the Series C Preferred (subject to adjustment from time to time for Recapitalizations and issuances of certain Additional Shares of Common, as set forth elsewhere herein).

(j) **"Preferred Stock"** shall mean the Series A Preferred, Series B Preferred, and the Series C Preferred.

(k) **"Pro Rata Allocation"** means, for each holder of Series C Preferred: the product of (X) the lesser of (a) the number of Series D Preferred actually issued and sold in a Qualified Financing or (b) a number equal to \$13,800,000.00 divided by the conversion price for the Series D Preferred, and (Y) ratio of (a) the number of shares of Series C Preferred owned by such holder of Series C Preferred immediately prior to the issuance of shares of Series D Preferred issued in a Qualified Financing to (b) the total number of shares of Series C Preferred Stock outstanding immediately prior to the issuance of shares issued in a Qualified Financing.

(l) **"Qualified Financing"** means the Corporation's next equity financing in which the Corporation receives aggregate net proceeds of at least \$5,000,000.

(m) “Recapitalization” shall mean any stock dividend, stock split (other than the Stock Split), combination of shares, reorganization, recapitalization, reclassification or other similar event.

(n) “Restated Certificate” means this Fifth Amended and Restated Certificate of Incorporation of the Corporation

(o) “Series D Preferred” shall mean and include the Corporation’s Series D Preferred or such other series or class of stock authorized in connection with the Qualified Financing.

2. Dividends.

(a) Preferred Stock. In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock until all declared dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to such dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year.

(b) Additional Dividends. After the payment or setting aside for payment of the dividends described in Section 2(a), any additional dividends (other than dividends on Common Stock payable solely in Common Stock for which an adjustment to the Conversion Price is made pursuant to Section 4(e) or (f) below) declared or paid in any fiscal year shall be declared or paid among the holders of the Preferred Stock and Common Stock then outstanding in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted at the then-effective Conversion Rate (as defined in Section 4 hereof).

(c) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board.

(d) Consent to Certain Distributions. As authorized by Section 402.5(c) of the California Corporations Code, Sections 502 and 503 of the California Corporations Code shall not apply with respect to payments made by the Corporation in connection with each of the following Board approved events (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements approved by the Board and providing for the right of said repurchase at a price no greater than the original purchase price, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements approved by the Board and

providing for such right, (iii) repurchases of Common Stock or Preferred Stock that is junior in preference with respect to Distributions to at least one other series of Preferred Stock ("**Junior Preferred Stock**") approved by the Board and in connection with the settlement of disputes with any stockholder approved by the Board, (iv) any other repurchase or redemption of Common Stock or Junior Preferred Stock approved by the Board and the holders of Preferred Stock of the Corporation in accordance with Section 6 below.

3. Liquidation Rights.

(a) Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (each, a "**Liquidation Event**"), the holders of the Preferred Stock by reason of their ownership of Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock, an amount per share for each share of Preferred Stock held by them equal to the sum of (i) the Liquidation Preference and (ii) all declared but unpaid dividends (if any) on such share of Preferred Stock (in aggregate for all shares of Preferred Stock, the "**Senior Preference**"). If upon such Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Preferred Stock are insufficient to permit the payment to such holders of the full Senior Preference, then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive in respect of the Senior Preference pursuant to this Section 3(a).

(b) Remaining Assets. After the payment or setting aside for payment to the holders of Preferred Stock of the full Senior Preference specified in Section 3(a) above, the entire assets of the Corporation remaining legally available for distribution shall be distributed pro rata to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

(c) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(d) Reorganization. For purposes of this Section 3, a Liquidation Event shall be deemed to be occasioned by, or to include, (a) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding a merger effected exclusively to change the domicile of the Corporation, or any sale of stock for capital raising purposes approved by a majority of the voting power of the outstanding Preferred Stock) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately before such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), as a result of shares in the Corporation held by such holders before such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation

or such surviving entity outstanding immediately after such transaction or series of transactions; (b) a sale, lease or other conveyance of all or substantially all of the assets of the Corporation; (c) an exclusive license of all or substantially all of the Corporation's intellectual property; or (d) a transaction or series of transactions in which any shares of Preferred Stock are converted into any other property or security of a third party (other than Common Stock as provided in Section 4 below.

(e) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any Liquidation Event or deemed Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board, except that any publicly-traded securities to be distributed to stockholders in such Liquidation Event or deemed Liquidation Event shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be based on the formula specified in the definitive agreements for the deemed Liquidation Event or if no such formula exists, then the value of such securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days before the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be based on the formula specified in the definitive agreements for the deemed Liquidation Event or if no such formula exists, then the value of such securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days before the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(e), "trading day" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "closing prices" or "closing bid prices" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(f) Notice of Reorganization. The Corporation shall give each holder of record of Preferred Stock written notice of any impending Liquidation Event not later than 10 days before the stockholders' meeting called to approve such transaction, or 10 days before the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Event. The first of such notices shall describe the material terms and conditions of the impending Liquidation Event and the provisions of this Section 3, and the Corporation shall

thereafter give such holders prompt notice of any material changes. The Liquidation Event shall in no event take place sooner than 10 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein. Notwithstanding the other provisions of this Restated Certificate, all notice periods or requirements in this Restated Certificate may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of a majority of the voting power of the outstanding shares of Preferred Stock that are entitled to such notice rights.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "Conversion Rate" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately before the closing of a firm commitment underwritten initial public offering by a nationally recognized underwriter pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of the Corporation's Common Stock, provided that the offering price per share is not less than \$6.00 (as adjusted for Recapitalizations) and the aggregate gross proceeds to the Corporation are not less than \$30,000,000.00, or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of two-thirds of the voting power of the Preferred Stock then outstanding, or, if later, the effective date for conversion specified in such requests (each, an "Automatic Conversion Event").

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall either: (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock; or (ii) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that on

the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. In the case of a voluntary conversion pursuant to Section 4(a), such conversion shall be deemed to have been made immediately before 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 on such date. If the conversion is in connection with an offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation (including without limitation a Liquidation Event or a deemed Liquidation Event) or other event (including without limitation an Automatic Conversion Event), the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately before the closing of such transaction or the occurrence of such event.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this Section 4(d), "Additional Shares of Common" shall mean all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Restated Certificate, other than:

(1) shares of Common Stock issued or issuable to officers, directors and employees of, or consultants to, the Corporation pursuant to stock grants, option plans, purchase plans or other employee stock incentive programs or arrangements, in each case approved

by the Board, or upon exercise of options or warrants granted to such parties pursuant to any such plan or arrangement;

(2) shares of Common Stock issued or issuable upon the exercise or conversion of Options or Convertible Securities outstanding as of the Effective Date and all shares of Common Stock issued or issuable on conversion of the authorized Series A Preferred, Series B Preferred or Series C Preferred;

(3) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which an adjustment is made pursuant to Section 4(e), 4(f), or 4(g) hereof;

(4) shares of Common Stock issued in a registered public offering under the Securities Act which results in an Automatic Conversion Event;

(5) shares of Common Stock issued or issuable to banks, equipment lessors, or other financial institutions pursuant to a debt financing or commercial leasing transaction, the principal purpose of which is other than raising capital through the sale of securities of the Corporation; provided that such issuances and transactions are approved by the Board and, if necessary, the holders of Preferred Stock as provided in Section 6 below;

(6) shares of Common Stock issued or issuable in connection with bona fide acquisitions, mergers or similar transactions; provided that the terms of such transaction are approved by the Board and, if necessary, the holders of Preferred Stock as provided in Section 6 below; and

(7) shares of Common Stock issuable or issued to an entity as a component of any corporate strategic relationship, the principal purpose of which is other than the raising of capital through the sale of equity securities of the Corporation, provided, that such relationships and such issuances are approved by the Board.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (as determined pursuant to Section 4(d)(vi)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately before such issue, for such series of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the Effective Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such

Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities set forth in this Section 4(d) or pursuant to Recapitalizations), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

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

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been

received by the Corporation (determined pursuant to Section 4(d)(vi)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately before such issue, then, the Conversion Price of the affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of adjusting the Conversion Price of a series of Preferred Stock, the grant, issue or sale of Additional Shares of Common consisting of the same class of security and/or warrants to purchase such security issued or issuable at the same price at two or more closings held within a six-month period shall be aggregated and shall be treated as one sale of Additional Shares of Common occurring on the earliest date on which such securities were granted, issued or sold. For the purposes of calculating the adjustment to the Conversion Price of a series of Preferred Stock in accordance with this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding shares of Common Stock.

(v) Pay-to-Play.

(1) In the event the Corporation issues Series D Preferred in a Qualified Financing and a holder of Series C Preferred does not purchase its full Pro Rata Allocation, then each share of Preferred Stock held by such stockholder will automatically, without any further action on the part of such stockholder or the Corporation, be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share immediately prior to the closing of such the Qualified Financing.

(2) Any conversion implemented as a result of the provisions contained in Section 4(d)(v)(1) shall be effective immediately before the closing of a Qualified Financing contemplated in Section 4(d)(v)(1).

(3) Notwithstanding anything else contained herein and for greater certainty, any adjustment to Preferred Stock pursuant to Section 4(d)(iv) that is triggered by the issuance of additional Shares of Common under a Qualified Financing contemplated in Section 4(d)(v) shall be inapplicable to any shares of Preferred Stock that have been automatically converted into shares of Common Stock pursuant to this Section 4(d)(v).

(4) In the event that the Corporation shall propose at any time to enter into a Qualified Financing then, in connection with each such event, the Corporation shall send the holders of Series C Preferred prior written notice of the material terms and conditions of such Qualified Financing and the closing date of such Qualified Financing at least 15 days prior to the date the Corporation closes such Qualified Financing. The Corporation shall thereafter give such holders prompt notice of any material changes to such material terms and conditions of such Qualified Financing. The closing of the Qualified Financing shall in no event take place sooner than 15 days after the Corporation has given the first notice provided for herein or sooner than 15 days after the Corporation has given notice of any material changes provided for herein. Such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Series C Preferred at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed. Notwithstanding the other provisions of this Restated Certificate, all notice periods or requirements in this Section 4(d)(v) may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of a majority of the voting power of the outstanding Series C Preferred entitled to such notice; provided however that if such amendment or waiver would cause the prior written notice period to be less than at least five business days, then such amendment or waiver must be approved by the vote or written consent of the holders of at least 75% of the voting power of the outstanding Series C Preferred.

(5) Upon the occurrence of a conversion of a stockholder's Preferred Stock pursuant to Section 4(d)(v)(1), such stockholder shall surrender the certificates representing such converted Preferred Stock at the office of the Corporation or any transfer agent for the Preferred Stock, or at such other place as may be designated by the Corporation; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent, or the stockholder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Thereupon, there shall be issued and delivered to such stockholder promptly, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were automatically converted on the date on which such automatic conversion occurred. The person in whose name the certificate or certificates for such shares of Common Stock is to be issued shall be deemed to have become a stockholder on the effective date of the conversion into the Common Stock, unless the transfer books of the Corporation are closed on that date, in which case such person shall be deemed to have become a stockholder of record on the next succeeding date on which the transfer books are open.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock.

(vi) Determination of Consideration. For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue (irrespective of any accounting treatment), as determined in good faith by the Board; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration that covers both cash and property, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 4(d)(iii) shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion

Price of each series of Preferred Stock in effect immediately before such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately before such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately before such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately before such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to the rights of the Preferred Stock and Common Stock in Section 3 above ("Liquidation Rights"), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) No Impairment. The Corporation will not through any reorganization, transfer of assets, 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 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 Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 4(h) shall prohibit the Corporation from amending its Certificate of Incorporation with the requisite consent of its stockholders and the Board.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The 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 (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(j) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of the majority 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.

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(l) Notices of Record Date. In the event that the Corporation shall propose at any time

(i) to declare any dividend or Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to effect a Liquidation Event or to enter into any transaction that could be deemed a Liquidation Event pursuant to Section 3(d);

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock at least 10 days' prior written notice of the date on which a record shall be taken for such dividend, Distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above. Such written notice shall be given by first class mail, postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed. The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of a majority of the voting power of the outstanding Preferred Stock entitled to such notice.

5. Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided in this Restated Certificate or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) No Series Voting. Other than as provided in this Restated Certificate or required by law, there shall be no series voting.

(c) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(d) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

(e) Election of Directors. The Board will consist of six (6) members. The holders of Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Common Stock, voting together as a single class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Preferred Stock and the holders of Common Stock, voting together as a single class on an as converted to Common Stock basis, shall be entitled to elect all additional members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Preferred Stock, voting together as a separate series, in accordance with the provisions of this Section 5(e), the remaining director or directors so elected by the holders of Preferred Stock (or, if there is no remaining director, a majority of the holders of Preferred Stock voting together as a separate series), shall elect a successor or successors to serve for the unexpired term of the director whose office is vacant. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Common Stock, voting together as a separate class, in accordance with the provisions of this Section 5(e), the remaining director or directors so elected by the holders of Common Stock (or, if there is no remaining director, a majority of the holders of Common Stock) voting together as a separate class, shall elect a successor or successors to serve for the unexpired term of the director whose office is vacant. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of Common Stock and Preferred Stock, voting together as a single class on an as converted to Common Stock basis, in accordance with the provisions of this Section 5(e) above, the remaining director or directors so elected by the holders of Common Stock and Preferred Stock voting together as a separate class on an as converted to Common Stock basis (or, if there is no remaining director, a majority of the holders of Common

Stock and Preferred Stock, voting together as a separate class on an as converted to Common Stock basis) shall elect a successor or successors to serve for the unexpired term of the director whose office is vacant. Any director who was elected by a specified class or classes of stock or series thereof may be removed during his or her term of office, either for or without cause, by, and only by, the affirmative vote of a majority of the holders of the shares of the class or classes of stock or series thereof that initially elected such director.

6. Amendments and Changes. The Corporation shall not (whether by any reorganization, recapitalization, transfer of assets, consolidation, merger, amendment, dissolution, issuance or sale of securities or any other action) without the vote or written consent by the holders of at least a majority of the then outstanding shares of Preferred Stock, voting together as a single class and on an as-converted to Common Stock basis: (i) effect a Liquidation Event or a deemed Liquidation Event, (ii) alter or change the rights, preferences or privileges of the Preferred Stock so as to adversely affect such shares, (iii) increase or decrease the number of authorized shares of Common Stock or Preferred Stock or any series thereof, (iv) authorize or issue (or obligates itself to issue) securities having a preference over or on a parity with the Preferred Stock including without limitation with respect to voting, dividends, conversion, redemption or upon liquidation, (v) redeem shares (excluding Common Stock repurchased at a price no greater than the original purchase price and approved by the Board upon termination of an officer, employee or director or consultant pursuant to a restricted stock purchase agreement approved by the Board), (vi) amend the Corporation's Bylaws or this Restated Certificate in any way, or take any other action that would adversely affect the rights, preferences, privileges or restrictions of the Preferred Stock or any series thereof (whether by any reorganization, recapitalization, transfer of assets, consolidation, merger, amendment, dissolution, issuance or sale of securities or any other action), (vii) increase the number of authorized members of the Board, (viii) encumber all or substantially all of the Corporation's property or business or grant an exclusive license for all or substantially all of its intellectual property assets, (ix) engage in any business other than as specified in the Business Plan (as such term is defined in the Corporation's Series C Preferred Stock Purchase Agreement dated on or about the Effective Date); (x) incur any indebtedness or issue any guaranty of any third-party obligation, in either case in excess of \$200,000 unless included in the annual operating budget approved by the Board, (xi) enter into any equity interest investment or any acquisition of any business for consideration in excess of \$1,000,000, (xii) enter into any contract, agreement or other instrument with any affiliate of the Corporation, any holder of the Corporation's securities or any director or employee of the Corporation unless approved by a majority of the disinterested directors of the Board, (xiii) authorize or create any new stock options, stock purchase or other stock-based incentive or compensation plans, or amendment of the Corporation's 2002 Stock Plan, or (xiv) pay dividends on or make other distributions with respect to any securities other than the Preferred Stock.

7. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4, redeemed, or otherwise repurchased by the Corporation, the shares so converted, redeemed, or repurchased shall be cancelled and shall not be issuable by the Corporation.

8. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage

prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE IX

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

2. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

3. Neither any amendment nor repeal of this ARTICLE IX, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this ARTICLE IX, shall eliminate or reduce the effect of this ARTICLE IX, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE IX, would accrue or arise, before such amendment, repeal or adoption of an inconsistent provision.

ARTICLE X

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

ARTICLE XI

To the maximum extent permitted from time to time under the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time being presented to its officers, directors or stockholders, other than (i) those officers, directors or stockholders who are employees of the Corporation and (ii) those opportunities demonstrated by the Corporation to have been presented to such officers, directors or stockholders expressly as a result of their activities as a director, officer or stockholder of the Corporation. No amendment or repeal of this ARTICLE XI shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities which such officer, director or stockholder becomes aware before such amendment or repeal.
