

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ANGIOGENIX, INC.**

Edmon R. Jennings, hereby certifies that:

ONE: The original name of this company is Angiogenix, Inc. and the date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was November 18, 1997.

TWO: He is the duly elected and acting President of Angiogenix, Inc., a Delaware corporation.

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

I.

The name of this company is Angiogenix, Inc. (the "Company").

II.

The address of the registered office of the Company in the State of Delaware is:

National Registered Agents, Inc.
9 East Loockerman Street, Suite 1B
City of Dover, County of Kent

The name of the Company's registered agent at said address is National Registered Agents, Inc.

III.

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

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Company is authorized to issue is twenty one million four hundred twenty-three thousand five hundred seventy nine (21,423,579) shares, thirteen million (13,000,000) shares of which shall be Common Stock (the "Common Stock") and eight million four hundred twenty-three thousand five hundred seventy nine (8,423,579) shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of one tenth of one cent (\$0.001) per share and the Common Stock shall have a par value of one tenth of one cent (\$0.001) per share.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company (voting together on an as-if-converted basis).

C. Ninety-five thousand one hundred twenty (95,120) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock," two hundred fifty-eight thousand five hundred sixty-four (258,564) of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock," seven million six hundred sixty-three thousand two hundred eighty (7,663,280) of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" and four hundred six thousand six hundred fifteen (406,615) of the authorized shares of Preferred Stock are hereby designated "Series D Preferred Stock" (the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D together are the "Series Preferred").

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. **DIVIDEND RIGHTS.**

(a) Holders of Series D Preferred Stock (the "First Senior Preferred"), in preference to the holders of (i) Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (together, the "Junior Series Preferred") and (ii) Common Stock (together with the Junior Series Preferred, the "Junior Stock"), shall be entitled to receive, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the Original Issue Price (as defined below) of the Series D Preferred Stock per annum on each outstanding share of Series D Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the date that the first share of Series D Preferred Stock is issued (the "Original Issue Date")). Such dividends shall be cumulative and will accrue commencing on the Original Issue Date. Such dividends shall be payable in full upon the earliest to occur of (i) the date of any redemption of the Series D Preferred Stock pursuant to Section (D)(5) of this Article IV or (ii) the date of a Liquidation Event (as defined below).

(b) Holders of Series C Preferred Stock, in preference to the holders of (i) Series A Preferred Stock and Series B Preferred Stock and (ii) Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of seven percent (7%) of the Original Issue Price (as defined below) of the Series C Preferred Stock per annum on each outstanding share of Series C Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the date of filing of this Amended and Restated Certificate of Incorporation (the "Filing Date")). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(c) Holders of Series A Preferred Stock and Series B Preferred Stock, in preference to the holders of Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends

at the rate of seven percent (7%) of the Original Issue Price of the Series A Preferred Stock or the Series B Preferred Stock, as the case may be, per annum on each outstanding share of Series A Preferred Stock and Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(d) The "Original Issue Price" of the Series A Preferred Stock shall be six dollars twenty-five cents (\$6.25) per share, the "Original Issue Price" of the Series B Preferred Stock shall be eight dollars twenty-five cents (\$8.25) per share, the "Original Issue Price" of the Series C Preferred Stock shall be two-dollars and sixty five cents (\$2.65) per share and the "Original Issue Price" of the Series D Preferred Stock shall be two-dollars and sixty five cents (\$2.65) per share.

(e) So long as any shares of Series D Preferred Stock are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Junior Stock, or purchase, redeem or otherwise acquire for value any shares of Junior Stock (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost upon termination of services to the Company as are approved by the Board of Directors or in exercise of the Company's right of first refusal to repurchase such shares) until all dividends (set forth in Section 1(a) above) on the Series D Preferred Stock shall have been paid or declared and set apart. In the event dividends are paid on any share of Junior Stock, the Company shall pay an additional dividend on all outstanding shares of Series D Preferred Stock in an amount per share equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Junior Stock.

(f) So long as any shares of Series Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost upon termination of services to the Company as are approved by the Board of Directors or in exercise of the Company's right of first refusal to repurchase such shares) until all dividends (set forth in Section 1(a) above) on the Series Preferred shall have been paid or declared and set apart. Without duplication of the provisions of Section 1(d) above, in the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Series Preferred in an amount per share equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(g) The holders of the Series Preferred expressly waive their rights, if any, as described in California Code Sections 502, 503 and 506 as they relate to repurchases of shares upon termination of employment or service as a consultant or director.

2. VOTING RIGHTS.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the holders of Series D Preferred Stock shall not be entitled to any vote by reason of their ownership thereof on any matter. Each holder of shares of the Junior Series Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Junior Series Preferred could be converted (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent or, if no such record date is established, on the date such vote is taken, and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or as required by law, the Junior Series Preferred (and Series Preferred if applicable) shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

(b) **Separate Vote of Series C Preferred Stock.** For so long as at least six hundred thousand (600,000) shares of Series C Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series C Preferred Stock after Filing Date) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series C Preferred Stock shall be necessary for effecting or validating the following actions:

(i) any alteration, change or amendment of the voting or other powers, preferences, special rights, privileges or restrictions of the Series C Preferred Stock;

(ii) the creation of any new class stock or any other securities convertible into equity securities of the Company ranking prior to or on a parity with the Series C Preferred Stock in right of redemption, liquidation, preferences, conversion, voting or dividends;

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

(iv) any action that results in the payment or declaration of a dividend on any shares of Series Preferred or Common Stock or any security junior in any power, preferences or other rights or privileges, except as contemplated by Section 1(a) of Article IV;

(v) redemption of any Series Preferred, except as contemplated by Section D(5) of this Article IV;

(vi) repurchase of any securities of the Company, except for (i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost upon termination of services to the Company as are approved by the Board of Directors or in exercise of the Company's right of first refusal to repurchase such shares or (ii) as contemplated by Section D(5) of this Article IV.

(vii) completion of an Asset Transfer or Acquisition (each as defined in Section 3);

(viii) amendment of this Amended and Restated Certificate of Incorporation or the Bylaws of the Company;

(ix) any increase or decrease in the authorized number of directors constituting the Board of Directors above or below seven (7); or

(x) any voluntary dissolution or liquidation of the Company.

(c) **Separate Vote of Series D Preferred Stock.** For so long as any shares of Series D Preferred Stock remain outstanding, the vote or written consent of the holders of at least a majority of the outstanding Series D Preferred Stock shall be necessary for any alteration, change or amendment of the voting or other powers, preferences, special rights, privileges or restrictions of the Series D Preferred Stock.

(d) **Election of Board of Directors.**

(i) For so long as at least two hundred thousand (200,000) shares of Series A Preferred Stock and Series B Preferred Stock remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series A Preferred Stock and/or the Series B Preferred Stock after the Filing Date), the holders of Series A Preferred Stock and Series B Preferred Stock, voting together as a separate class, shall be entitled to elect one (1) member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director;

(ii) For so long as at least six hundred thousand (600,000) shares of Series C Preferred Stock remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series C Preferred Stock after the Filing Date), the holders of Series C Preferred Stock, voting as a separate class, shall be entitled to elect three (3) members of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors (the "Series C Directors");

(iii) The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(iv) The holders of the Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a class, shall be entitled to elect all remaining members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from

office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(v) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Company is subject to Section 2115 of the California General Corporation Law ("CGCL"). During such time or times that the Company is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(e) **Removal.** During such time or times that the Company is subject to Section 2115(b) of the CGCL, the Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote; provided, however, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series D Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, an amount per share of Series D Preferred Stock equal to the Original Issue Price of the Series D Preferred Stock, plus all accrued and unpaid dividends on the Series D Preferred Stock (in each case as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) for each share of Series D Preferred Stock held by them. If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series D Preferred Stock of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series D Preferred Stock at the time outstanding, ratably in proportion to the full

amounts to which they would otherwise be respectively entitled by reason of their ownership thereof.

(b) After the payment of the full liquidation preference of the Series D Preferred Stock as set forth in Section 3(a) above, before any distribution or payment shall be made to the holders of any Series A Preferred Stock, Series B Preferred Stock or Common Stock, the holders of Series C Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, an amount per share of Series C Preferred Stock equal to the Original Issue Price of the Series C Preferred Stock, plus the greater of (x) the Series C Adjustment Amount (as defined below) or (y) declared and unpaid dividends on the Series C Preferred Stock (in each case as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) for each share of Series C Preferred Stock held by them, respectively. If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series C Preferred Stock of the liquidation preference set forth in this Section 3(b), then such assets (or consideration) shall be distributed among the holders of Series C Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled by reason of their ownership thereof. The "Series C Adjustment Amount" shall be the product of (i) the Original Issue Price of the Series C Preferred Stock multiplied by (ii) seven percent (7%) multiplied by (iii) the number of days after December 4, 2002 on which such liquidation, dissolution or winding up of the Company is approved by the Company's Board of Directors, divided by (iv) three hundred sixty-five (365); provided, however, that in the event of a liquidation, dissolution or winding up of the Company approved by the Company's Board of Directors prior to December 4, 2005 and pursuant to which the holders of Series C Preferred Stock will receive (without giving effect to any Series C Adjustment Amount) payment pursuant to the provisions of this Section 3 in an amount per share of Series C Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) equal to at least two hundred percent (200%) of the Original Issue Price of the Series C Preferred Stock, then the Series C Adjustment Amount shall be zero.

(c) After the payment of the full liquidation preference of the Series D Preferred Stock and Series C Preferred Stock as set forth in Sections 3(a) and 3(b) above, before any distribution or payment shall be made to the holders of Common Stock, the holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, an amount per share equal to the Original Issue Price of the Series A Preferred Stock or the Series B Preferred Stock, as the case may be, plus all declared and unpaid dividends on the Series A Preferred Stock or the Series B Preferred Stock, as the case may be (in each case as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date). Upon any such liquidation, dissolution, or winding up, if, after all payments have been made pursuant to Sections 3(a) and 3(b) above, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series A Preferred Stock and Series B Preferred Stock of the liquidation preference set forth in this Section 3(c), then the remaining assets and funds of the Company (or consideration) legally available for distribution shall be distributed among the

holders of Series A Preferred Stock and Series B Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled by reason of their ownership thereof.

(d) After the payment of the full liquidation preference of (i) the Series D Preferred Stock as set forth in Section 3(a) above, (ii) the Series C Preferred Stock as set forth in Section 3(b) above and (iii) the Series A Preferred Stock and Series B Preferred Stock as set forth in Section 3(c) above, the remaining assets of the Company legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Series C Preferred Stock (on an as converted basis) and Common Stock *pari passu* until the holders of the Series C Preferred Stock shall have received an aggregate per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date) of three times the Original Issue Price of the Series C Preferred Stock (including amounts, other than accrued dividends, paid pursuant to Section 3(b)); thereafter, the remaining assets of the Company legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock *pro rata* based on the number of shares of Common Stock held by each.

(e) The following events shall be considered a liquidation under this Section:

(i) (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Company (each, an "Acquisition"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "Asset Transfer").

(iii) In any of such events, if the consideration received by Company is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors and the holders of at least a majority of the voting power of all then outstanding shares of Junior Series Preferred. Any securities shall be valued as follows:

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

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

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

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors (including a majority of the Series C Directors).

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

4. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to (i) the conversion of the Series D Preferred Stock into shares of the Next Equity Securities (as defined below) or Series C Preferred Stock and (ii) the conversion of the Junior Series Preferred into shares of Common Stock (in each case, the "Conversion Rights"). "Next Equity Securities" shall mean the Company's equity securities, or any securities conferring the right to purchase the Company's equity securities or securities convertible into, or exchangeable for (with or without additional consideration) the Company's equity securities, sold in connection with a Qualified Private Placement (as defined below). "Qualified Private Placement" means the issuance and sale after the Filing Date of equity securities by the Company that results in gross proceeds to the Company of at least \$7,000,000 from investors who are not, as of the Filing Date, stockholders of the Company or affiliates of stockholders of the Company.

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Junior Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Junior Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the appropriate Series Preferred Conversion Rate then in effect (determined as provided in Section 4(b)) by the number of shares of Junior Series Preferred being converted.

(b) **Series Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series Preferred (the "Series Preferred Conversion Rate") shall be: (i) in the case of conversion of shares of Series A Preferred Stock, the quotient obtained by dividing the Original Issue Price of the Series A Preferred Stock by the Series A Preferred Conversion Price, calculated as provided in Section 4(c); (ii) in the case of conversion of shares of Series B Preferred Stock, the quotient obtained by dividing the Original Issue Price of the Series B Preferred Stock by the Series B Preferred Conversion Price, calculated as provided in Section 4(c); (iii) in the case of conversion of shares of Series C Preferred Stock, the quotient obtained by dividing the Original Issue Price of the Series C Preferred Stock by the Series C

Preferred Conversion Price, calculated as provided in Section 4(c) and (iv) in the case of conversion of shares of Series D Preferred Stock, the quotient obtained by dividing (A) the Original Issue Price of the Series D Preferred Stock plus any accrued and unpaid dividends per share of Series D Preferred Stock by (B) the Series D Preferred Conversion Price, calculated as provided in Section 4(c).

(c) **Series Preferred Conversion Price.** The conversion price for the Series A Preferred Stock shall initially be (\$3.5492) (the "Series A Preferred Conversion Price"). The conversion price for the Series B Preferred Stock shall initially be (\$4.050074) (the "Series B Preferred Conversion Price"). The conversion price for the Series C Preferred Stock shall initially be the Original Issue Price of the Series C Preferred Stock (the "Series C Preferred Conversion Price"). The conversion price for the Series D Preferred Stock shall be (i) upon conversion of shares of Series D Preferred Stock into shares of the Next Equity Securities, the lowest price per share paid by any investor purchasing Next Equity Securities or (ii) upon conversion of shares of Series D Preferred Stock into Series C Preferred Stock, the Series C Preferred Conversion Price (as applicable, the "Series D Preferred Conversion Price"). The initial Series A Preferred Conversion Price, Series B Preferred Conversion Price and Series C Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series A Preferred Conversion Price, Series B Preferred Conversion Price, Series C Preferred Conversion Price or Series D Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price, Series B Preferred Conversion Price, Series C Preferred Conversion Price or Series D Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.**

(i) Each holder of Series D Preferred Stock who desires to convert the same into shares of the Next Equity Securities or Series C Preferred Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series D Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series D Preferred Stock being converted and whether the Series D Preferred Stock is being converted into Series C Preferred Stock or Next Equity Securities. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Next Equity Securities or Series C Preferred Stock, as the case may be, to which such holder is entitled and shall promptly pay in cash (at the fair market value of such security determined by the Board of Directors as of the date of such conversion) the value of any fractional share of Next Equity Securities or Series C Preferred Stock, as the case may be, otherwise issuable to any holder of Series D Preferred Stock. Such conversion shall be deemed to have been made on the date of closing of the transaction giving rise to the conversion, and the person entitled to receive the shares of Next Equity Securities or Series C Preferred Stock, as the case may be, issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Next Equity Securities or Series C Preferred Stock, as the case may be, on such date.

(ii) Each holder of Junior Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4, shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer

agent for the Junior Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Junior Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Junior Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Junior Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Junior Series Preferred to be converted, or in the case of automatic conversion pursuant to Section 4(l)(ii), on the date of closing of the offering or the date of the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of the Series C Preferred Stock, as applicable, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. In addition, any optional conversion may be conditional upon the happening of a specific event, in which event the person(s) entitled to receive Common Stock issuable upon such conversion of such Junior Series Preferred shall not be deemed to have converted such Junior Series Preferred until immediately prior to the happening of such event.

(e) Adjustment for Stock Splits and Combinations. If at any time or from time to time after the Filing Date the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Series Preferred, the Series A Preferred Conversion Price, Series B Preferred Conversion Price and Series C Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Filing Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Series Preferred, the Series A Preferred Conversion Price, Series B Preferred Conversion Price and Series C Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Common Stock Dividends and Distributions. If at any time or from time to time after the Filing Date the Company pays a dividend or other distribution in additional shares of Common Stock, the Series A Preferred Conversion Price, Series B Preferred Conversion Price and Series C Preferred Conversion Price that are then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The Series A Preferred Conversion Price, Series B Preferred Conversion Price or the Series C Preferred Conversion Price, as the case may be, shall be adjusted by multiplying the Series Preferred Conversion Price then in effect by a fraction equal to:

(A) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series A Preferred Conversion Price, Series B Preferred Conversion Price or the Series C Preferred Conversion Price, as the case may be, shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Preferred Conversion Price, Series B Preferred Conversion Price or the Series C Preferred Conversion Price, as the case may be, shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Conversion Price, Series B Preferred Conversion Price and the Series C Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Filing Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(h) **Reorganizations, Mergers or Consolidations.** If at any time or from time to time after the Filing Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 3 or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock

or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(i) Sale of Shares Below Junior Series Preferred Conversion Price.

(i) If at any time or from time to time on or after the Filing Date, the Company issues or sells, or is deemed by the express provisions of this Section 4(i) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined below) less than the then effective Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price, as the case may be, then and in each such case, the then existing Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Preferred Conversion Price, Series B Preferred Conversion Price or the Series C Preferred Conversion Price, as the case may be, in effect immediately prior to such issuance or sale by a fraction equal to:

(A) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration received (as defined below) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price, as applicable, and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other outstanding rights, options and convertible securities issued pursuant to any stock plans or arrangements with officers, directors or employees of the Company on the day immediately preceding the given date.

(ii) No adjustment shall be made to the Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price in

an amount less than one cent per share. Any adjustment otherwise required by this Section 4(i) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price.

(iii) For the purpose of making any adjustment required under this Section 4(i), the aggregate consideration received by the Company for any issue or sale of securities (the "Aggregate Consideration") shall be defined as: (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iv) For the purpose of the adjustment required under this Section 4(i), if the Company issues or sells (x) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus:

(A) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); provided that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(C) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by

reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

(D) No further adjustment of the Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series A Preferred Conversion Price, Series B Preferred Conversion Price or Series C Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

(v) For the purpose of making any adjustment to the Conversion Price of the Series Preferred required under this Section 4(i), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of the Series Preferred;

(B) shares of Series D Preferred Stock issued pursuant to the Securities Purchase Agreement of the Company, dated on or about the Filing Date (the "Purchase Agreement");

(C) equity securities issued in connection with any stock split, stock dividend or recapitalization of the Company;

(D) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options,

warrants or other rights (as adjusted for any stock dividend, combinations, splits, recapitalizations and the like after the Filing Date) after the Filing Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board (including a majority of the Series C Directors);

(E) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Filing Date or issued pursuant to the Purchase Agreement;

(F) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for consideration other than cash pursuant to a merger, consolidation, acquisition, or similar business combination approved by the Board of Directors (including a majority of the Series C Directors);

(G) shares of Common Stock or Preferred Stock issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board (including a majority of the Series C Directors); and

(H) any equity securities issued in connection with strategic transactions and alliances involving the Company and other entities approved by the Board of Directors (including a majority of the Series C Directors), including (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements.

References to Common Stock in the subsections of this clause (v) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4(i), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 4(i), for such Additional Shares of Common Stock.

(j) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series A Preferred Conversion Price, the Series B Preferred Conversion Price or the Series C Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A

Preferred Conversion Price, the Series B Preferred Conversion Price or the Series C Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

(k) **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least twenty (20) days prior to the record date specified therein or the date when such event shall take place or become effective (or such shorter period approved by the holders of a majority of the outstanding Series Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(l) **Automatic Conversion.**

(i) (A) Each share of Series D Preferred Stock shall automatically be converted into shares of Next Equity Securities or Series C Preferred Stock (with the form of such conversion to be as provided in a Qualified Approval (as defined below)), based on the applicable Series D Preferred Conversion Price immediately upon the closing of Qualified Private Placement. A "Qualified Approval" shall mean the written election or consent of the holders of outstanding Shares (as defined below) and/or outstanding Notes (as defined below) representing an aggregate dollar amount equal to 66-2/3% of (x) the aggregate purchase price for the then outstanding Shares plus (y) the aggregate principal amount of the then outstanding Notes. "Shares" shall mean the shares of Series D Preferred Stock issued pursuant to the Purchase Agreement. "Notes" shall mean the convertible promissory notes issued pursuant to the Purchase Agreement.

(B) Upon a Qualified Approval in connection with an Asset Transfer or an Acquisition, each share of Series D Preferred Stock shall automatically be converted into shares of Series C Preferred Stock based on the applicable Series D Preferred Conversion Price immediately upon the closing of such Asset Transfer or Acquisition.

(ii) Each share of Junior Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price, the Series B Preferred Conversion Price or Series C Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least a majority of the

outstanding shares of the Series C Preferred Stock; or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the initial public offering price is at least \$15.00 per share (as adjusted for any stock splits, dividends, recapitalizations and the like) and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$30,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(iii) Upon the occurrence of any of the events specified in Section 4(l)(i) or (ii) above, the outstanding shares of Series D Preferred Stock or Junior Series Preferred, as the case may be, shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the security issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series D Preferred Stock or Junior Series Preferred, as the case may be, the holders of Series D Preferred Stock or Junior Series Preferred, as the case may be, shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of equity securities into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(m) **Fractional Shares.** No fractional shares shall be issued upon conversion of Series Preferred. All shares (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of the security into which the Series Preferred is converted (as determined by the Board of Directors) on the date of conversion.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Series C Preferred Stock or Common Stock, as the case may be, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Series C Preferred Stock or Common Stock, as the case may be, as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Series C Preferred Stock or Common Stock, as the case may be, shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be

necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(o) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

(q) **No Dilution or Impairment.** Without the consent of the holders of then outstanding Series C Preferred Stock as required under Section 2(b) or, if applicable, the holders of then outstanding Series D Preferred Stock as required under Section 2(c), the Company shall not amend its Amended and Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.

5. REDEMPTION RIGHTS.

(a) **Mandatory Redemption of Series D Preferred Stock.** Upon the earlier to occur of (i) June 30, 2005 or (ii) upon a Qualified Approval and the consent of the Company (the earlier to occur, the "Redemption Date"), the Company shall redeem, from any source of funds legally available therefor, the then outstanding shares of Series D Preferred Stock. The Company shall effect such redemptions by paying in cash a sum equal to the Original Issue Price of the Series D Preferred Stock plus all accrued and unpaid dividends per share of Series D Preferred Stock as set forth in Section 3(a) (the "Redemption Price"). Any redemption effected pursuant to this Section 5(a) shall be made on a pro rata basis among the holders of the Series D Preferred Stock in proportion to the number of shares of Series D Preferred Stock then held by such holders.

(b) **Notice of Redemption.** At least 10 days prior to the Redemption Date, written notice shall be delivered to each holder of record of the Series D Preferred Stock to be redeemed, at the address last shown on the records of the Company, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder,

the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Company, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in subsection 5(c) on or after the Redemption Date, each holder of Series D Preferred Stock to be redeemed shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled.

(c) **Rights.** From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series D Preferred Stock designated for redemption in the Redemption Notice (except the right to receive the Redemption Price with simple interest at the rate of eight percent (8%) per annum upon surrender of their certificate or certificates) shall cease with respect to the shares to be redeemed, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. If the funds of the Company legally available for redemption of shares of Series D Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series D Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series D Preferred Stock. The shares of Series D Preferred Stock not redeemed shall remain outstanding and entitled to all the rights, preferences and privileges provided in this Amended and Restated Certificate of Incorporation. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Series D Preferred Stock, such funds will immediately be used to redeem the balance of the shares that the Company has become obliged to redeem on any Redemption Date but that it has not redeemed.

V.

A. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, no director of the Company shall be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. The Company shall, 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 Company or any predecessor of the Company or serves or served at any other enterprise as a director, officer or employee at the request of the Company or any predecessor to the Company to the same extent as permitted under subsection (a) above.

C. Neither any amendment nor repeal of this Article V, nor the adoption of any provision of the Company's Certificate of Incorporation inconsistent with this Article V, shall eliminate or reduce the effect of this Article V in respect of any matter occurring or any action or proceeding accruing or arising or that, but for this Article V, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

D. The Company may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

VI.

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

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Restated Certificate.

B. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

C. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.


* * * *

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

FIVE: This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the DGCL by the Board of Directors and the stockholders of the Company. A majority of the outstanding shares of each of the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock and Series C Preferred Stock approved this Amended and Restated Certificate of Incorporation by written consent in accordance with Section 228 of the DGCL and written notice of such was given by the Company in accordance with said Section 228.

IN WITNESS WHEREOF, Angiogenix, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its President this 20th day of December 2004.

ANGIOGENIX, INC.

Signature: 
Print Name: Edmon R. Jennings
Title: President