

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
AGILE THERAPEUTICS, INC.

Agile Therapeutics, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY THAT:

FIRST: The Board of Directors of Agile Therapeutics, Inc. (the "Corporation"), pursuant to a written consent of the directors dated as of December 17, 2007, duly adopted the following resolution setting forth a proposed amendment of the Certificate of Incorporation of the Corporation, declaring said amendment to be advisable and calling for consideration thereof by the stockholders of the Corporation. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that Article Fourth of the Certificate of Incorporation of Agile Therapeutics, Inc. shall be amended in its entirety so as to provide as set forth on Exhibit A hereto.

SECOND: Thereafter, pursuant to a resolution of the Board of Directors, the following stockholders of the Corporation voted in favor of the amendment: (i) the holders of a majority of the outstanding shares of all classes of capital stock of the Corporation, voting together as a single class, (ii) the holders of in excess of 70% of the outstanding shares of the Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock, Series D Convertible Preferred Stock and Series E Convertible Preferred Stock, voting together in a single class, (iii) the holders of a majority of the outstanding shares of the Series A Convertible Preferred Stock of the Corporation, voting as a separate series, (iv) the holders of a majority of the outstanding shares of Series B Convertible Preferred Stock of the Corporation, voting as a separate series, (v) the holders of a majority of the outstanding shares of Series C Convertible Preferred Stock of the Corporation, voting as a separate series, (vi) the holders of a majority of the outstanding shares of Series D Convertible Preferred Stock of the Corporation, voting as a separate series, and (vii) the holders of a majority of the outstanding shares of Series E Convertible Preferred Stock of the Corporation, voting as a separate series.

THIRD: The amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware. With respect to such adoption, written consent of the stockholders of the Corporation has been given in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware and written notice has been given as provided in Section 228.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its duly authorized officer as of December 18, 2007.

(SEAL)

AGILE THERAPEUTICS, INC.

By: 

Thomas M. Rossi

President and Chief Executive Officer

DM3599422.2

EXHIBIT A

FOURTH. - The aggregate number of shares of stock that the Corporation shall have the authority to issue is 175,000,000, of which 100,000,000 shares are Common Stock with a par value of \$.0001 per share (the "Common Stock"), and 75,000,000 shares are Preferred Stock with a par value of \$.0001 per share (the "Preferred Stock"). 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 and reserved for issuance in respect of securities convertible into or exercisable for shares of Common Stock) by an affirmative vote of the holders of at least 60% of the voting power of the outstanding shares of capital stock of the Corporation (the Preferred Stock and Common Stock voting together as a single class), irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware; provided, however, if such affirmative vote is not obtained in any instance solely because one of the Major Preferred Stockholders (as defined in the Second Amended and Restated Stockholders Agreement dated as of May 11, 2006, as amended, by and among the Corporation and its stockholders (the "Stockholders Agreement")) fails to approve such increase and all other Major Preferred Stockholders approve such increase, then subject to applicable Delaware General Corporation Law, such increase shall nevertheless be deemed to be approved, if at least a majority of the voting power of the outstanding shares of the outstanding capital stock of the Corporation, voting together as a single class, vote to approve such increase.

The Preferred Stock may be issued from time to time by the Board of Directors as herein provided in one or more series. The designations, relative rights (including voting rights), preferences, limitations and restrictions of the Preferred Stock, and particularly of the shares of each series thereof, may, to the extent permitted by law, be similar to or may differ from those of any other series. The Board of Directors of the Corporation is hereby expressly granted authority, subject to the provisions of this Article Fourth, to issue from time to time Preferred Stock in one or more series in addition to the Series A Convertible Preferred Stock (the "Series A Preferred Stock"), the Series B Convertible Preferred Stock (the "Series B Preferred Stock"), the Series C Convertible Preferred Stock (the "Series C Preferred Stock"), the Series D Convertible Preferred Stock (the "Series D Preferred Stock"), the Series E Convertible Preferred Stock (the "Series E Preferred Stock") and the Series E-1 Convertible Preferred Stock (the "Series E-1 Preferred Stock") created by Section VI and to fix from time to time before issuance thereof, by filing a certificate of designations pursuant to the General Corporation Law of the State of Delaware, the number of shares in each such series and all designations, relative rights (including the right, to the extent permitted by law, to convert into shares of any class or into shares of any series of any class), preferences, qualifications, limitations and restrictions of the shares in each such series (provided that such rights, preferences, qualifications, limitations and restrictions are not inconsistent with the rights, preferences and limitations of the outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series E-1 Preferred Stock).

Subject to the foregoing, the rights, preferences, voting powers, qualifications, limitations, restrictions and special or relative rights or privileges of the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series E-1 Preferred Stock are as follows:

I. Rights on Liquidation, Dissolution or Winding Up.

(a) In the event of any liquidation, dissolution or winding up of the Corporation (a "Liquidation Event"), distributions out of the assets of the Corporation available therefor shall be made to the stockholders of the Corporation in the following manner:

(i) The holders of the Series E-1 Preferred Stock then outstanding shall be entitled to receive, before any payment shall be made to the holders of the Series E Preferred Stock, the Series D Preferred Stock, the Series C Preferred Stock, the Series B Preferred Stock, the Series A Preferred Stock and the Common Stock, the following amount with respect to each share of Series E-1 Preferred Stock held: (A) the Original Issuance Price (as defined in Section VI(f)) of the respective share of Series E-1 Preferred Stock plus (B) any accrued but unpaid dividends on such share.

(ii) After the holders of the Series E-1 Preferred Stock have been paid in full the preferential amounts to which they shall be entitled under Section 1(a)(i), the holders of shares of the Series E Preferred Stock then outstanding shall be entitled to receive, on a par with the amounts that the holders of shares of the Series D Preferred Stock shall be entitled to receive under Section I(a)(iii), before any payment shall be made to the holders of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock, the following amount with respect to each share of Series E Preferred Stock held: (A) the Original Issuance Price (as defined in Section VI(e)) of the respective share of Series E Preferred Stock plus (B) any accrued but unpaid dividends on such share.

(iii) After the holders of the Series E-1 Preferred Stock have been paid in full the preferential amounts to which they shall be entitled under Section 1(a)(i), the holders of shares of the Series D Preferred Stock then outstanding shall be entitled to receive, on a par with the amounts that the holders of the Series E Preferred Stock shall be entitled to receive under Section I(a)(ii), before any payment shall be made to the holders of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock, the following amount with respect to each share of Series D Preferred Stock held: (A) the Original Issuance Price (as defined in Section VI(d)) of the respective share of Series D Preferred Stock plus (B) any accrued but unpaid dividends on such share.

(iv) After the holders of the Series E-1 Preferred Stock, Series E Preferred Stock and Series D Preferred Stock have been paid the full preferential amounts to which they shall be entitled under Sections I(a)(i), (ii), and (iii), the holders of shares of the Series B Preferred Stock then outstanding shall be entitled to receive, on a par with the amounts that the holders of shares of the Series A Preferred Stock and the Series C Preferred Stock shall be entitled to receive pursuant to Sections I(a)(v) and (vi), before any payment shall be made to the holders of shares of the Common Stock, the following amount with respect to each share of Series B Preferred Stock held: (A) the Original Issuance Price (as defined in Section VI(b)) of the respective share of Series B Preferred Stock plus (B) any declared but unpaid dividends on such share.

(v) After the holders of the Series E-1 Preferred Stock, Series E Preferred Stock and Series D Preferred Stock have been paid the full preferential amounts to which they

shall be entitled under Sections I(a)(i), I(a)(ii), and (iii), the holders of shares of the Series A Preferred Stock then outstanding shall be entitled to receive, on a par with the amounts that the holders of shares of the Series B Preferred Stock and the Series C Preferred Stock shall be entitled to receive pursuant to Sections I(a)(iv) and (vi), before any payment shall be made to the holders of shares of the Common Stock, the following amount with respect to each share of Series A Preferred Stock held: (A) the Original Issuance Price (as defined in Section VI(a)) of the respective share of Series A Preferred Stock plus (B) any declared but unpaid dividends on such share.

(vi) After the holders of the Series E-1 Preferred Stock, Series E Preferred Stock and Series D Preferred Stock shall have been paid the full preferential amounts to which they shall be entitled under Sections I(a)(i), (ii), (iii), the holders of shares of the Series C Preferred Stock then outstanding shall be entitled to receive, on a par with the amounts that the holders of shares of the Series A Preferred Stock and the Series B Preferred Stock shall be entitled to receive pursuant to Sections I(a)(iv) and (v), before any payment shall be made to the holders of shares of the Common Stock, the following amount with respect to each share of Series C Preferred Stock held: (A) the Original Issuance Price (as defined in Section VI(c)) of the respective share of Series C Preferred Stock plus (B) any accrued but unpaid dividends on such share.

(vii) After the holders of the Series E-1 Preferred Stock, Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock shall have been paid the full preferential amounts to which they shall be entitled under Sections I(a)(i), (ii), (iii), (vi), (iv) and (v), the remaining assets of the Corporation available for distribution to the stockholders of the Corporation shall be distributed ratably to the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series E-1 Preferred Stock and the Common Stock in accordance with the respective number of shares of Common Stock owned by each. For purposes of this joint distribution of assets, each holder of shares of the Preferred Stock shall be regarded as owning that number of shares of Common Stock into which the shares of Preferred Stock held by such holder would then be convertible pursuant to Section III hereof.

(viii) If the assets of the Corporation available for distribution to the holders of shares of the Series E-1 Preferred Stock under Section I(a)(i) shall be insufficient to permit the payment to all such holders their full preferential amounts, the holders of the Series E-1 Preferred Stock shall share ratably in any distributions of assets in accordance with the relative respective amounts that would be payable in respect of the shares of Series E-1 Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. If the assets of the Corporation available for distribution to the holders of shares of the Series D Preferred Stock under Section I(a)(iii) and Series E Preferred Stock under Section I(a)(ii) shall be insufficient to permit the payment to all such holders their full preferential amounts, the holders of the Series D Preferred Stock and Series E Preferred Stock shall share ratably in any distributions of assets in accordance with the relative respective amounts that would be payable in respect of the shares of Series D Preferred Stock and Series E Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. If the assets of the Corporation available for distribution to the

holders of shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock under Sections I(a)(v), I(a)(iv) and I(a)(vi) shall be insufficient to permit the payment to all such holders of their full preferential amounts, the holders of shares of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall share ratably in any distribution of assets in accordance with the relative respective amounts that would be payable in respect of the shares of such Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) The per share liquidation preferences to be paid to the holders of any series of Preferred Stock hereunder shall be proportionately adjusted to reflect any stock splits, stock combinations, stock subdivisions, recapitalizations, stock dividends or other like events with respect to such series of Preferred Stock (collectively, a "Recapitalization Event").

(c) (i) For purposes of this Section I, unless otherwise determined by the holders of 75% of the outstanding shares of the Preferred Stock, voting together as a single class, a Liquidation Event shall be deemed to occur upon the occurrence of any transaction or series of related transactions: (1) involving the merger or consolidation of the Corporation, or a subsidiary of the Corporation, into or with another entity (other than a transaction or series of related transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to 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 securities in the Corporation held by such holders prior to such transaction, more than 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, determined on an as-if-converted basis), or (2) that constitute the sale, lease, transfer, exchange, exclusive license or other conveyance of all or substantially all of the assets of the Corporation (each such transaction, a "Deemed Liquidation Event"); provided, however, if such determination is not made in any instance solely because one of the Major Preferred Stockholders fails to make such determination and all other Major Preferred Stockholders make such determination, then subject to applicable Delaware General Corporation Law, such determination shall nevertheless be deemed to have been made.

(ii) If the Corporation effects any transaction that constitutes a Deemed Liquidation Event pursuant to this Section I(c) and the provisions of Section I(c)(i) are not waived as set forth therein, the holders of Preferred Stock shall have the right to receive (and proper provision shall be made, including by the successor or acquiring entity in such transaction, so that the holders of Preferred Stock shall receive) out of the proceeds of such transaction (including any stock, securities, cash or other property to be received by the Corporation or its stockholders in such transaction) their respective liquidation preferences in the same manner as set forth in Section I(a) above.

(iii) If the Corporation effects any transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property and such transaction does not constitute a Deemed Liquidation Event pursuant to this Section I(c) or if the provisions of Section I(c)(i) are waived as set forth therein, then in any such case the Preferred Stock will continue to be outstanding on the same terms and conditions as set forth herein, except that if the Corporation does not exist after such event, the successor corporation or

ultimate parent thereof, if applicable, will, as a condition to the effectiveness of such transaction, be required to issue to the holders of each series of Preferred Stock securities with the same rights, preferences and privileges as such series of Preferred Stock.

(iv) The Corporation shall give each holder of record of Preferred Stock written notice of an impending transaction described in Section I(c)(iii) above not later than 15 days prior to the stockholders' meeting called to approve such transaction, or 15 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction by the stockholders. The first of such notices shall describe the material terms and conditions of such impending transaction and the provisions of this Section I, and the Corporation shall thereafter give such holders notice of any material changes promptly after such material changes are made. Such impending transaction shall in no event take place sooner than 30 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.

(v) If the consideration received by the Corporation or any holders of its equity securities in connection with a Deemed Liquidation Event is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

(1) If traded on a national 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 exchange or system over the 30 day period ending three 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 30 day period ending three days prior to the closing; and

(3) If there is no public trading market for such securities, by the Board of Directors of the Corporation in the good faith exercise of their reasonable business judgment; provided that, if the holders of at least 75% of the outstanding Preferred Stock object to such valuation, then the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of not less than 75% of the outstanding shares of Preferred Stock, voting together as a single class; and, provided further, that, if the Board of Directors of the Corporation and the holders of at least 75% of the outstanding shares of Preferred Stock are unable to reach an agreement, then by independent appraisal by an investment bank hired and paid by the Corporation, but reasonably acceptable to the holders of at least 75% of the outstanding shares of Preferred Stock, voting together as a single class.

(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 shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the fair market value determined as above in (A) (1), (2) or (3) to reflect the approximate

fair market value thereof, as mutually determined by the Corporation and the holders of not less than 75% of the outstanding shares of Preferred Stock, voting together as a single class; and, provided further, that, if, the Corporation and the holders of at least 75% of the outstanding shares of Preferred Stock are unable to reach an agreement, then by independent appraisal by an investment bank hired and paid by the Corporation, but reasonably acceptable to the holders of at least 75% of the outstanding shares of Preferred Stock, voting together as a single class.

(vi) In the event the requirements of this Section I(c) which must occur prior to closing of such Deemed Liquidation Event are not complied with by the Corporation, the Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section I(c) have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the cancellation of such transaction.

II. Voting.

(a) The holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series E-1 Preferred Stock and the Common Stock shall be entitled to notice of all stockholders' meetings and to vote or to act by written consent of stockholders.

(b) Except as otherwise required by law, by this Certificate of Incorporation or in a certificate of designations filed pursuant to the Delaware General Corporation Law, the holders of the Preferred Stock and the holders of the Common Stock shall vote as a single class, upon all matters submitted to the stockholders for a vote on the basis that each holder of Preferred Stock shall have that number of votes per share of Preferred Stock as is equal to the number of shares of Common Stock into which each respective share of Preferred Stock held by such holder could be converted on the date for determination of stockholders entitled to vote at the meeting or on the effective date of the written consent. The holders of the Common Stock shall be entitled to one vote for each share of Common Stock registered in the name of such holder. With respect to all questions as to which, under law, stockholders are entitled to vote by class, the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series E-1 Preferred Stock shall vote together as a single class separately from the holders of the Common Stock on the basis that each holder of Preferred Stock shall have the number of votes per share of Preferred Stock as is equal to the number of shares of Common Stock into which each respective share of Preferred Stock held by such holder could be converted on the date for determination of stockholders entitled to vote at the meeting or the effective date of the written consent.

(c) As long as any shares of Preferred Stock are outstanding, the Corporation shall not take any of the following actions without first obtaining the approval (by vote or written consent, in the manner provided by the Delaware General Corporation Law) of the holders of at least 70% of the then outstanding shares of Preferred Stock then held by the Major Preferred

Stockholders (voting together as a single class, on an as-if converted to Common Stock basis); provided, however, if such 70% approval is not obtained in any instance solely because one of the Major Preferred Stockholders fails to approve the action and all other Major Preferred Stockholders approve the action, then subject to applicable Delaware General Corporation Law, the action shall nevertheless be deemed to be approved; provided, further, in the case of the events set forth in clause (iii) below, with respect to actions adversely affecting the rights, preferences or privileges of any particular series of Preferred Stock or rights or interests of the holders of such shares in a manner different than or impacting differently than the other series of Preferred Stock, the Corporation shall not take any of such actions without first obtaining the approval of the holders of a majority of the then outstanding shares of such affected series of Preferred Stock:

(i) enter into any agreement for the sale, lease, transfer or other disposition by the Corporation of all or a substantial portion of its assets, a merger, consolidation or other transaction in which the holders of the voting power of the Corporation prior to such transaction will hold, after such transaction, less than 50% of the voting power of the Corporation or any other transaction that would constitute a Deemed Liquidation Event;

(ii) purchase or redeem, make any payment on account of the repurchase, redemption or retirement of any shares of its capital stock or debt securities, or make any dividend on any shares of its capital stock, except as required herein or repurchases of shares of capital stock from former employees or consultants of the Corporation in connection with the cessation of their employment or services, as applicable, at a price not greater than their then fair market value;

(iii) amend this Certificate of Incorporation or the by-laws of the Corporation or otherwise change the rights, privileges or preferences of the shares of Preferred Stock so as to affect adversely such shares or the rights or interests of the holders of such shares;

(iv) create or authorize the creation of, or issue, any other security convertible into or exercisable for any equity security having rights, privileges or preferences senior to or on parity with any series of the Preferred Stock, or the authorization, creation or issuance of which would affect adversely the rights or interests of the holders of Preferred Stock;

(v) increase the number of shares of Preferred Stock authorized in this Certificate of Incorporation;

(vi) voluntarily dissolve, liquidate or wind up or carry out any partial liquidation, distribution or transaction in the nature of a partial liquidation or distribution;

(vii) increase or decrease the size of the Board of Directors;

(viii) enter into any agreement or instrument which by its terms would restrict the Corporation's right to perform any of its obligations pursuant to the terms of this Certificate of Incorporation or its By-Laws;

(ix) borrow money or issue evidences of indebtedness other than (A) under equipment leases, the Corporation's obligations under which shall not, individually or in the

aggregate, exceed \$100,000 or (B) indebtedness that shall be approved by the Board of Directors of the Corporation, including at least one director designated pursuant to Section 4(a)(ii)(1) of the Stockholders Agreement;

(x) sell or license any of the Corporation's intellectual property, other than sales or licenses in the ordinary course of the Corporation's business;

(xi) acquire control of another entity, other than the formation of a wholly owned subsidiary of the Corporation in the ordinary course of business; or

(xii) make any substantial change in its business as conducted and/or proposed to be conducted as of December 18, 2007.

(d) Subject to the applicable provisions of the Delaware General Corporation Law, the directors of the Corporation shall be elected in the manner set forth in the Stockholders Agreement.

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

(a) Each share of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and 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 such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Conversion Value per share (as set forth in Section VI) by the Conversion Price per share (as set forth in Section VI) in effect at the time of conversion. The initial Conversion Price with respect to such series of Preferred Stock shall be subject to adjustment as hereinafter provided.

(b) Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price upon: (i) the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, or any comparable statute then in force, covering the offer and sale of Common Stock for the account of the Corporation to the public (a "Public Offering") for a price per share equal to at least \$1.14 (as adjusted for Recapitalization Events) and from which the Corporation receives gross proceeds of at least \$50,000,000 (a "Qualified Public Offering"); or (ii) the affirmative vote of the holders of 70% of the voting power of the Preferred Stock acting as a class in accordance with Section II(b), after first giving effect, if in connection with a Public Offering which is not a Qualified Public Offering, to any adjustment of the Conversion Price for each series of Preferred Stock to which it would otherwise be entitled by virtue of such Public Offering.

(c) No fractional shares of Common Stock shall be issued upon conversion of the 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 effective applicable Conversion Price.

(d) Upon the occurrence of an event specified in Section III(b), the 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 for the Preferred Stock; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Preferred Stock being converted are either delivered to the Corporation or its transfer agent, or the holder 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 therewith and, if the Corporation so elects, provides an appropriate indemnity bond. Upon the automatic conversion of the Preferred Stock pursuant to Section III(b), the holders of such Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of its transfer agent. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred. From and after the date of the event that causes the automatic conversion, all rights of the holder with respect to the Preferred Stock so converted shall terminate, except only the right of such holder, upon the surrender of such holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock issuable upon conversion thereof.

(e) Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock (except as provided in Section III(b)), such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of its transfer agent for the Preferred Stock and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the holder's name or the name or names of the holder's nominee in which the holder wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the holder's nominee, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid, together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made on the date of such surrender of the shares of Preferred Stock to be converted and notice as herein provided, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date or, if such date is a weekend or legal holiday, the next succeeding business day. From and after such date, all rights of the holder with respect to the Preferred Stock so converted shall terminate.

(f) (i) For purposes of this Section III(f), the following definitions shall apply:

(1) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Convertible Securities" shall mean any evidences of indebtedness or shares (other than Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series

C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock) directly or indirectly convertible into or exchangeable for Common Stock.

(3) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation after December 18, 2007, other than:

(A) shares of Common Stock issued or issuable upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series E-1 Preferred Stock or as a dividend, stock split or other distribution thereon;

(B) up to 10,979,316 (or such higher number as may be approved by the Board of Directors, including the director designated pursuant to Section 4(a)(ii)(1)(A) of the Stockholders Agreement) shares of Common Stock, as adjusted for Recapitalization Events, issued or issuable pursuant to any stock incentive plans, stock purchase plans or other option plans or compensation arrangements, or any other stock bonus or grant arrangements, approved by the Board of Directors (the "Plans"); and

(C) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation.

(ii) (1) In the event that the Corporation at any time or from time to time after December 18, 2007 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 and Options therefor, the exercise of such Options and conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue of such Options or Convertible Securities or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section III(f)(iv)) of such Additional Shares of Common Stock would be less than the Conversion Price with respect to any series of Preferred Stock in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

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

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock

issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects the rights of exercise under such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities that shall not have been exercised, the Conversion Price computed upon the original issuance 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:

(i) in the case of Options or Convertible Securities, the only Additional Shares of Common Stock 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 all such Options, plus the consideration actually received by the Corporation upon such exercise, or the consideration actually received by the Corporation for the issue of all such Convertible Securities that were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(ii) 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 Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section III(f)(iv)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount that exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any actual issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(E) in the case of any Options that expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and

(F) 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 that 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 III(f)(ii) as of the actual date of their issuance.

(2) In the event the Corporation at any time or from time to time after December 18, 2007 shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise other than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued:

(A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution, or

(B) in the case of any such subdivision, when such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend or distribution shall have been paid or made on the date fixed therefor, the adjustment previously made in the Conversion Price that 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 III(f)(ii) as of the time of actual payment of such dividend or making of such distribution.

(iii) In the event the Corporation shall issue Additional Shares of Common Stock (including, without limitation, Additional Shares of Common Stock deemed to be issued pursuant to Section III(f)(ii)), without consideration or for a consideration per share less than the Conversion Price for the Series E Preferred Stock in effect on the date of and immediately prior to such issuance (a "Dilutive Issuance"), then and in such event, the Conversion Price for each series of Preferred Stock shall be reduced, concurrently with such Dilutive Issuance as follows:

(1) If any Additional Shares of Common Stock are issued by the Corporation in a Dilutive Issuance prior to the date (such date, the "Full-Ratchet Termination Date") that the Corporation shall have raised not less than \$2,000,000 from the sale of its Preferred Stock in a transaction or series of related transactions occurring after December 18, 2007 (each such Dilutive Issuance, a "Full-Ratchet Issuance"), the Conversion Price shall be reduced as follows:

(A) the Conversion Price for each of the Series E Preferred Stock and the Series E-1 Preferred Stock shall be reduced to a price equal to the consideration per share received by the Corporation in such Full-Ratchet Issuance; and

(B) the Conversion Price for each series of Preferred Stock other than the Series E Preferred Stock and the Series E-1 Preferred Stock with a Conversion Price then greater than the consideration per share received by the Corporation in such Full-Ratchet Issuance shall be reduced by the same percentage that the Conversion Price for the Series E Preferred Stock and the Series E-1 Preferred Stock was reduced pursuant to Section III(f)(iii)(1)(A) above, but not below the Conversion Price then in effect for the Series E

Preferred Stock and the Series E-1 Preferred Stock (giving effect to the reduction contemplated by Section III(f)(iii)(1)(A) above). By way of example, in the event that Additional Shares of Common Stock are issued in a Full-Ratchet Issuance at a price of \$.19 per share, the Conversion Price for the Series E Preferred Stock and the Series E-1 Preferred Stock would be reduced to \$.19 per share, which represents 50% of the \$.38 Conversion Price for the Series E Preferred Stock and the Series E-1 Preferred Stock, and the Conversion Price for each series of Preferred Stock other than the Series E Preferred Stock and the Series E-1 Preferred Stock subject to adjustment pursuant to this Section III(f)(iii)(1)(B) would be reduced to 50% of the then applicable Conversion Price for such series of Preferred Stock, but in any case not below the Conversion Price (as so adjusted) then in effect for the Series E Preferred Stock and the Series E-1 Preferred Stock.

(2) If any Additional Shares of Common Stock are issued by the Corporation in a Dilutive Issuance at any time after the Full-Ratchet Termination Date (each such Dilutive Issuance, a "Weighted Average Issuance"), (A) the Conversion Price for the Series E Preferred Stock and the Series E-1 Preferred Stock shall be reduced to a price (calculated to the nearest tenth of a cent) determined by multiplying such Conversion Price for the Series E Preferred Stock and the Series E-1 Preferred Stock by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Weighted Average Issuance plus the number of shares of Common Stock which the aggregate consideration received or deemed to have been received by the Corporation for the total number of Additional Shares of Common Stock so issued or deemed to be issued would purchase at such Conversion Price and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such Weighted Average Issuance plus the number of such Additional Shares of Common Stock so issued or deemed to be issued (the "Weighted Average Formula") and (B) the Conversion Price for each series of Preferred Stock other than the Series E Preferred Stock and Series E-1 Preferred Stock with a then Conversion Price greater than the consideration per share received by the Corporation in such Weighted Average Issuance shall be reduced to the greater of (i) the price (calculated to the nearest tenth of a cent) determined by the Weighted Average Formula, applying the Conversion Price of such series of Preferred Stock to the Weighted Average Formula, or (ii) the price (calculated to the nearest tenth of a cent) by applying the same percentage that the Conversion Price for the Series E Preferred Stock was reduced pursuant to Section III(f)(iii)(2)(A) above, but in either case not below the Conversion Price then in effect for the Series E Preferred Stock and the Series E-1 Preferred Stock (giving effect to the reduction contemplated by Section III(f)(iii)(2)(A) above). By way of example, in the event that Additional Shares of Common Stock are issued in a Weighted Average Issuance where the Conversion Price for the Series E Preferred Stock and the Series E-1 Preferred Stock would be reduced by 25% of its then effective Conversion Price, then the Conversion Price for each series of Preferred Stock other than the Series E Preferred Stock and the Series E-1 Preferred Stock subject to adjustment pursuant to this Section III(f)(iii)(2)(B) would be reduced by the lesser of the Weighted Average Formula applied to such Conversion Price or by 25% of the then applicable Conversion Price for such series of Preferred Stock (but in either case not below the Conversion Price then in effect for the Series E Preferred Stock and the Series E-1 Preferred Stock).

For the purpose of this Section III(f)(iii), all shares of Common Stock issuable upon conversion of shares of Preferred Stock outstanding immediately prior to a Dilutive Issuance and

the exercise and/or conversion of any other outstanding Convertible Securities (excluding convertible debt with no fixed conversion price) and all outstanding Options shall be deemed to be outstanding.

In the event the Corporation, without receiving any consideration, declares a dividend on Common Stock payable in Common Stock or effects a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, the Conversion Price in effect immediately prior to such stock dividend or subdivision shall, on the date that Additional Shares of Common Stock are deemed issued pursuant to Section III(f)(ii)(2), be decreased proportionately.

(iv) For purposes of this Section III(f), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amounts of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors of the Corporation.

(2) The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section III(f)(ii)(1), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Corporation as consideration for the issuance 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.

(v) (1) In the event the Corporation shall issue Additional Shares of Common Stock pursuant to Section III(f)(ii)(2) in a stock dividend, stock distribution or

subdivision, such Additional Shares of Common Stock shall be deemed to have been issued for no consideration.

(2) In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the applicable Conversion Price with respect to each series of Preferred Stock in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(vi) No adjustment in the number of shares of Common Stock into which the Preferred Stock is convertible shall be made, by adjustment in the Conversion Price in respect of the issuance of Additional Shares of Common Stock, unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price in effect on the date of, and immediately prior to, the issuance of such Additional Share.

(vii) If at any time or from time to time there shall be a recapitalization of the Common Stock (but not the Preferred Stock) (other than a transaction provided for elsewhere in this Section III or in Section I), provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section III with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section III (including adjustment of the Conversion Price of each series of Preferred Stock then in effect and the number of shares purchasable upon conversion of each series of Preferred Stock) shall be applicable after that event as nearly equivalent as shall be reasonably practicable.

(g) Except for an amendment approved in accordance with Section II, the Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance 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 shall at all times in good faith assist in the carrying out of all the provisions of this Section III and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock set forth herein against impairment.

(h) Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section III, 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 each share of Preferred Stock.

(i) In the event of any taking by the Corporation of a record of the holders of any class or series of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend that is the same as cash dividends paid in previous quarters) or other distribution, the Corporation shall mail to each holder of each series of Preferred Stock that is convertible into Common Stock, at least 10 days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(j) The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Preferred Stock.

(k) The Corporation shall pay any issue or transfer taxes payable in connection with the conversion of the Preferred Stock, provided, however, that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer to a name other than that of the holder of the Preferred Stock, and no issuance or delivery need be made unless the Corporation has been paid the amount of such tax or it has been established to the Corporation's satisfaction that the tax has been paid.

IV. Dividends.

(a) Except as otherwise provided in this Section IV or in a certificate of designations filed pursuant to the Delaware General Corporation Law with respect to any series of Preferred Stock, the holders of shares of Preferred Stock shall not be entitled to receive dividends.

(b) The holders of shares of the Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series E-1 Preferred Stock shall be entitled to receive dividends as provided in this Section IV. Dividends on each share of Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be calculated cumulatively on a daily basis at the rate of 8% per annum of the Original Issuance Price with respect to such share of Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock commencing on December 18, 2007, whether or not there are (at the time such dividend is calculated or becomes payable or at any other time) funds of the Corporation legally available for the payment of dividends. No dividends shall accrue or be payable with respect to the shares of the Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock for any period prior to December 18, 2007, and all previously accrued dividends on those shares shall be forfeited. Dividends on each share of Series E-1 Preferred Stock shall be calculated cumulatively on a daily basis at the rate of 8% per annum of the Original Issuance Price with respect to such share of Series E-1 Preferred Stock from the Original Issuance Date, whether or not there are (at the time such dividend is calculated or becomes payable or at any other time) funds of the Corporation legally available for the payment of dividends. All such dividends shall be cumulative and accrue whether or not such dividends have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Cumulative dividends shall be payable only pursuant to Section I(a) upon the occurrence of a Liquidation Event and shall be

forfeited upon the first closing of a Qualified Public Offering. All dividend payments pursuant to this Section IV(b) shall be made to the holders of Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series E-1 Preferred Stock pro rata, and for purposes of such pro rata payments, each holder of such shares of Preferred Stock shall be treated as owning that number of shares of Common Stock into which such shares of Preferred Stock held by such holder would then be convertible pursuant to Section III hereof.

(c) When and as dividends are declared payable in cash or property, other than shares of the Corporation's capital stock, with respect to shares of Common Stock, the Corporation shall declare at the same time and pay to each holder of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series E-1 Preferred Stock a dividend equal to the dividend that would have been payable to such holder if the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series E-1 Preferred Stock held by such holder had been converted into Common Stock on the record date for the determination of holders of Common Stock entitled to receive such dividend.

(d) No distributions shall be declared or paid on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the amounts set forth in Sections IV(b) and (c) have been paid to, or declared and set apart upon, all outstanding shares of Preferred Stock during that fiscal year.

(e) Notwithstanding the foregoing, in the event that the Corporation shall consummate a Qualified Public Offering, all accrued but unpaid dividends on all shares of Preferred Stock shall be forfeited and shall not be paid to the holders of such Preferred Stock, notwithstanding anything to the contrary contained in this Certificate of Incorporation including, without limitation, Section I(a).

(f) In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section III(f)(ii), in each case as permitted hereunder, and such distribution does not constitute a Liquidation Event or a deemed Liquidation Event as set forth in Section I, then, in each such case for the purpose of this Section IV, the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

V. Redemption at Holders' Option.

(a) (i) At the election in writing by the holders of at least 70% of the outstanding shares of Series E-1 Preferred Stock (a "Series E-1 Redemption Request") delivered to the Corporation at any time after December 18, 2012, the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, 33 1/3% of the outstanding shares of Series E-1 Preferred Stock no later than 45 days after the Corporation's receipt of the Series E-1 Redemption Request; provided, however, that if such election is not made in any

instance solely because one of the Major Preferred Stockholders holding Series E-1 Preferred Stock fails to make such election and all other Major Preferred Stockholders holding Series E-1 Preferred Stock make such election, then subject to applicable Delaware General Corporation Law, such election shall nevertheless be deemed to have been made. On or before the one-year anniversary of the date on which the first redemption occurs or is required to occur, the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, 50% of the remaining shares of Series E-1 Preferred Stock. On or before the two-year anniversary of the date on which the first redemption occurs or is required to occur, the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, the remaining shares of Series E-1 Preferred Stock. Each date on which an installment of the Series E-1 Preferred Stock is to be redeemed is referred to below as a "Series E-1 Redemption Date." The redemption price per share shall be the Original Issuance Price of such share, as appropriately adjusted for any Recapitalization Events, plus accrued but unpaid dividends thereon to the date of actual payment for such redeemed shares (the "Series E-1 Redemption Price").

(ii) The shares of Series E-1 Preferred Stock not redeemed pursuant to Section V(a)(i) because sufficient funds are not legally available therefor shall remain outstanding and entitled to all the rights and preferences with respect to such shares provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series E-1 Preferred Stock, such funds shall immediately be used to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. In case fewer than the total number of shares of Series E-1 Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares shall be issued to the holder thereof without cost to such holder within 10 business days after surrender of the certificate representing the redeemed shares. Any redemption effected pursuant to this Section V(a) shall be made ratably among the holders of the Series E-1 Preferred Stock in proportion to the aggregate Series E-1 Redemption Price each such holder of Series E-1 Preferred Stock would otherwise be entitled to receive on the applicable Series E-1 Redemption Date.

(iii) If the holders of Series E-1 Preferred Stock have elected to have the shares of Series E-1 Preferred Stock redeemed as provided in Section V(a)(i) above, then at least 30 days but no more than 60 days prior to each Series E-1 Redemption Date, the Corporation shall give written notice by certified or registered mail, postage prepaid, to all holders of shares of Series E-1 Preferred Stock at the address last shown on the records of the Corporation for such holder, stating each Series E-1 Redemption Date and the Series E-1 Redemption Price for such shares, and shall call upon such holder to surrender to the Corporation on each Series E-1 Redemption Date at the place designated in the notice such holder's certificate or certificates representing the shares to be redeemed. On or after each Series E-1 Redemption Date stated in such notice, each holder of the shares of Series E-1 Preferred Stock called for redemption shall surrender the certificate evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the Series E-1 Redemption Price, as the case may be, for the shares surrendered. If such notice of redemption shall have been duly given by the Corporation, and if on the Series E-1 Redemption Date funds necessary for the applicable redemption shall be available therefor, then, as to any certificates evidencing any Series E-1 Preferred Stock not surrendered, all rights of the holders of such shares not

surrendered shall cease with respect to such shares, except only the right of the holders to receive the Series E-1 Redemption Price for the Series E-1 Preferred Stock which they hold, without additional interest, upon surrender of their certificates therefor.

(b) (i) At the election in writing by the holders of at least 70% of the outstanding shares of Series E Preferred Stock (a "Series E Redemption Request") delivered to the Corporation at any time after such time as all shares of Series E-1 Preferred Stock shall have been redeemed pursuant to Section V(a), the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, 33 1/3% of the outstanding shares of Series E Preferred Stock no later than 45 days after the Corporation's receipt of the Series E Redemption Request. On or before the one-year anniversary of the date on which the first redemption occurs or is required to occur, the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, 50% of the remaining shares of Series E Preferred Stock. On or before the two-year anniversary of the date on which the first redemption occurs or is required to occur, the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, the remaining shares of Series E Preferred Stock. Each date on which an installment of the Series E Preferred Stock is to be redeemed is referred to below as a "Series E Redemption Date." The redemption price per share shall be the Original Issuance Price of such share, as appropriately adjusted for any Recapitalization Events, plus accrued but unpaid dividends thereon to the date of actual payment for such redeemed shares (the "Series E Redemption Price").

(ii) The shares of Series E Preferred Stock not redeemed pursuant to Section V(b)(i) because sufficient funds are not legally available therefor shall remain outstanding and entitled to all the rights and preferences with respect to such shares provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series E Preferred Stock, such funds shall immediately be used to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. In case fewer than the total number of shares of Series E Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares shall be issued to the holder thereof without cost to such holder within 10 business days after surrender of the certificate representing the redeemed shares. Any redemption effected pursuant to this Section V(a) shall be made ratably among the holders of the Series E Preferred Stock in proportion to the aggregate Series E Redemption Price each such holder of Series E Preferred Stock would otherwise be entitled to receive on the applicable Series E Redemption Date.

(iii) If the holders of Series E Preferred Stock have elected to have the shares of Series E Preferred Stock redeemed as provided in Section V(b)(i) above, then at least 30 days but no more than 60 days prior to each Series E Redemption Date, the Corporation shall give written notice by certified or registered mail, postage prepaid, to all holders of shares of Series E Preferred Stock at the address last shown on the records of the Corporation for such holder, stating each Series E Redemption Date and the Series E Redemption Price for such shares, and shall call upon such holder to surrender to the Corporation on each Series E Redemption Date at the place designated in the notice such holder's certificate or certificates representing the shares to be redeemed. On or after each Series E Redemption Date stated in such notice, each holder of the shares of Series E Preferred Stock called for redemption shall surrender the certificate

evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the Series E Redemption Price, as the case may be, for the shares surrendered. If such notice of redemption shall have been duly given by the Corporation, and if on the Series E Redemption Date funds necessary for the applicable redemption shall be available therefor, then, as to any certificates evidencing any Series E Preferred Stock not surrendered, all rights of the holders of such shares not surrendered shall cease with respect to such shares, except only the right of the holders to receive the Series E Redemption Price for the Series E Preferred Stock which they hold, without additional interest, upon surrender of their certificates therefor.

(c) (i) At the election in writing by the holders of at least 70% of the outstanding shares of Series C Preferred Stock and Series D Preferred Stock, voting together as a single class (a "Series C and Series D Redemption Request") delivered to the Corporation at any time after such time as all shares of Series E-1 Preferred Stock shall have been redeemed pursuant to Section V(a), the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, 33 1/3% of the outstanding shares of Series C Preferred Stock and Series D Preferred Stock no later than 45 days after the Corporation's receipt of the Series C and Series D Redemption Request. On or before the one-year anniversary of the date on which the first redemption occurs or is required to occur, the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, 50% of the remaining shares of Series C Preferred Stock and Series D Preferred Stock. On or before the two-year anniversary of the date on which the first redemption occurs or is required to occur, the Corporation shall redeem, on the terms and conditions stated herein and out of funds legally available therefor, the remaining shares of Series C Preferred Stock and the Series D Preferred Stock. Each date on which an installment of the Series C Preferred Stock and the Series D Preferred Stock is to be redeemed is referred to below as a "Series C and Series D Redemption Date." The redemption price per share shall be the Original Issuance Price of such share, as appropriately adjusted for any Recapitalization Events, plus accrued but unpaid dividends thereon to the date of actual payment for such redeemed shares (the "Series C and Series D Redemption Price").

(ii) The shares of Series C Preferred Stock and Series D Preferred Stock not redeemed pursuant to Section V(c)(i) because sufficient funds are not legally available therefor shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series C Preferred Stock and Series D Preferred Stock, such funds shall immediately be used to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. In case fewer than the total number of shares of Series C Preferred Stock and Series D Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares shall be issued to the holder thereof without cost to such holder within 10 business days after surrender of the certificate representing the redeemed shares. Any redemption effected pursuant to this Section V(a) shall be made ratably among the holders of the Series C Preferred Stock and Series D Preferred Stock in proportion to the aggregate Series C and Series D Redemption Price each such holder of Series C Preferred Stock and Series D Preferred Stock would otherwise be entitled to receive on the applicable Series C and Series D Redemption Date.

(iii) If the holders of Series C Preferred Stock and Series D Preferred Stock have elected to have the shares of Series C Preferred Stock and Series D Preferred Stock redeemed as provided in Section V(c)(i) above, then at least 30 days but no more than 60 days prior to each Series C and Series D Redemption Date, the Corporation shall give written notice by certified or registered mail, postage prepaid, to all holders of outstanding shares of Series C Preferred Stock and Series D Preferred Stock at the address last shown on the records of the Corporation for such holder, stating each Series C and Series D Redemption Date and the Series C and Series D Redemption Price for such shares, and shall call upon such holder to surrender to the Corporation on each Series C and Series D Redemption Date at the place designated in the notice such holder's certificate or certificates representing the shares to be redeemed. On or after each Series C and Series D Redemption Date stated in such notice, each holder of the shares of Series C Preferred Stock and Series D Preferred Stock called for redemption shall surrender the certificate evidencing such shares to the Corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the Series C and Series D Redemption Price, as the case may be, for the shares surrendered. If such notice of redemption shall have been duly given by the Corporation, and if on the Series C and Series D Redemption Date funds necessary for the applicable redemption shall be available therefor, then, as to any certificates evidencing any Series C Preferred Stock and Series D Preferred Stock not surrendered, all rights of the holders of such shares not surrendered shall cease with respect to such shares, except only the right of the holders to receive the Series C and Series D Redemption Price for the shares of Series C Preferred Stock and/or Series D Preferred Stock which they hold, without additional interest, upon surrender of their certificates therefor.

(d) Except as described in this Section V, the Preferred Stock shall not be redeemable by the Corporation.

VI. Terms of the Series A, Series B, Series C, Series D, Series E and Series E-1 Preferred Stock.

(a) There is hereby created a series of 1,850,000 shares of Preferred Stock designated "Series A Convertible Preferred Stock," having a Conversion Value of \$1.00 per share, an initial Conversion Price of \$1.00 per share and the other preferences, voting powers, qualifications, limitations, restrictions and special or relative rights or privileges set forth in this Certificate of Incorporation. The Conversion Price of the Series A Preferred Stock as of December 18, 2007 is \$.56 per share, and such Conversion Price shall not be changed from \$.56 per share as a result of the issuance of shares of Series E-1 Preferred Stock pursuant to the Series E-1 Preferred Stock Purchase Agreement dated as of December 18, 2007 among the Corporation and the investors named therein (the "Stock Purchase Agreement"), notwithstanding anything to the contrary contained in Section III(f). The "Original Issuance Date" for each share of Series A Preferred Stock shall mean the date on which such share was originally issued by the Corporation, and the "Original Issuance Price" for each share of Series A Preferred Stock shall mean \$1.00 per share of Series A Preferred Stock.

(b) There is hereby created a series of 381,945 shares of Preferred Stock designated "Series B Convertible Preferred Stock," having a Conversion Value of \$4.00 per share, an initial Conversion Price of \$4.00 per share and the other preferences, voting powers, qualifications, limitations, restrictions and special or relative rights or privileges set forth in this Certificate of

Incorporation. The Conversion Price of the Series B Preferred Stock as of December 18, 2007 is \$1.39 per share, and such Conversion Price shall not be changed from \$1.39 per share as a result of the issuance of shares of Series E-1 Preferred Stock pursuant to the Stock Purchase Agreement, notwithstanding anything to the contrary contained in Section III(f). The "Original Issuance Date" for each share of Series B Preferred Stock shall mean the date on which such share was originally issued by the Corporation, and the "Original Issuance Price" for each share for Series B Preferred Stock shall mean \$4.00 per share of Series B Preferred Stock.

(c) There is hereby created a series of 4,132,689 shares of Preferred Stock designated "Series C Convertible Preferred Stock," having a Conversion Value of \$2.70 per share, an initial Conversion Price of \$2.70 per share and the other preferences, voting powers, qualifications, limitations, restrictions and special or relative rights or privileges set forth in this Certificate of Incorporation. The Conversion Price of the Series C Preferred Stock as of December 18, 2007 is \$1.16 per share, and such Conversion Price shall not be changed from \$1.16 per share as a result of the issuance of shares of Series E-1 Preferred Stock pursuant to the Stock Purchase Agreement, notwithstanding anything to the contrary contained in Section III(f). The "Original Issuance Date" for each share of Series C Preferred Stock shall mean the date on which such share was originally issued by the Corporation, and the "Original Issuance Price" for each share for Series C Preferred Stock shall mean \$2.70 per share of Series C Preferred Stock.

(d) There is hereby created a series of 15,910,555 shares of Preferred Stock designated "Series D Convertible Preferred Stock," having a Conversion Value of \$.31 per share, an initial Conversion Price of \$.31 per share and the other preferences, voting powers, qualifications, limitations, restrictions and special or relative rights or privileges set forth in this Certificate of Incorporation. The Conversion Price of the Series D Preferred Stock as of December 18, 2007 is \$.31 per share, and such Conversion Price shall not be changed, as a result of the issuance of shares of Series E-1 Preferred Stock pursuant to the Stock Purchase Agreement. The "Original Issuance Date" for each share of Series D Preferred Stock shall mean the date on which such share was originally issued by the Corporation, and the "Original Issuance Price" for each share for Series D Preferred Stock shall mean \$.31 per share of Series D Preferred Stock.

(e) There is hereby created a series of 31,578,949 shares of Preferred Stock designated "Series E Convertible Preferred Stock," having a Conversion Value of \$.38 per share and the other preferences, voting powers, qualifications, limitations, restrictions and special or relative rights or privileges set forth in this Certificate of Incorporation. The Conversion Price of the Series E Preferred Stock as of December 18, 2007 is \$.38 per share, and such Conversion Price shall not be changed from \$.38 per share as a result of the issuance of shares of Series E-1 Preferred Stock pursuant to the Stock Purchase Agreement. The "Original Issuance Date" for each share of Series E Preferred Stock shall mean the date on which such share was originally issued by the Corporation, and the "Original Issuance Price" for each share for Series E Preferred Stock shall mean \$.38 per share of Series E Preferred Stock.

(f) There is hereby created a series of up to 14,844,022 shares of Preferred Stock designated "Series E-1 Convertible Preferred Stock," having a Conversion Value of \$.38 per share, an initial Conversion Price of \$.38 per share and the other preferences, voting powers, qualifications, limitations, restrictions and special or relative rights or privileges set forth in this Certificate of Incorporation. The "Original Issuance Date" for each share of Series E-1 Preferred

Stock shall mean the date on which such share was originally issued by the Corporation, and the "Original Issuance Price" for each share for Series E-1 Preferred Stock shall mean \$.38 per share of Series E-1 Preferred Stock.