



**FILED**  
 Secretary of State  
 State of California

APR 24 2014

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**EIGHTH AMENDED AND RESTATED  
 ARTICLES OF INCORPORATION  
 OF  
 AKROS SILICON, INC.**

The undersigned certify that:

1. They are the Chief Executive Officer and Secretary, respectively, of Akros Silicon, Inc., a California corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

**ARTICLE I.**

The name of this corporation is Akros Silicon, Inc., hereinafter referred to as the "Company" or the "Corporation."

**ARTICLE II.**

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

**ARTICLE III.**

This Corporation is authorized to issue two classes of stock, designated "Common Stock" and "Preferred Stock," respectively. The total number of shares of Common Stock this Corporation is authorized to issue is Three Hundred Twenty Million (320,000,000). The total number of shares of Preferred Stock this Corporation is authorized to issue is Two Hundred Sixty-Eight Million Three Hundred Fifteen Thousand Two Hundred Eighty-One (268,315,281).

Prior to the filing of the Eighth Amended and Restated Articles of Incorporation, there are thirteen authorized series of Preferred Stock, of which Nineteen Million Nine Hundred Twenty-Six Thousand Four Hundred Eighteen (19,926,418) shares of Preferred Stock have been designated as Series A-1 Convertible Preferred Stock (the "Series A-1 Preferred"), Nineteen Million Nine Hundred Twenty-Six Thousand Four Hundred Eighteen (19,926,418) shares of Preferred Stock have been designated as Series A-1<sup>1</sup> Convertible Preferred Stock (the "Series A-1<sup>1</sup> Preferred"), Eight Million Eight Hundred Fifty-Five Thousand Nine Hundred Twelve (8,855,912) shares of Preferred Stock have been designated as Series A-2 Convertible Preferred Stock (the "Series A-2 Preferred"),

Eight Million Eight Hundred Fifty-Five Thousand Nine Hundred Twelve (8,855,912) shares of Preferred Stock have been designated as Series A-2<sup>1</sup> Convertible Preferred Stock (the "Series A-2<sup>1</sup> Preferred"), Eight Million Two Hundred Fifty-Eight Thousand Six Hundred Ninety-Six (8,258,696) shares of Preferred Stock have been designated as Series A-3 Convertible Preferred Stock (the "Series A-3 Preferred"), Eight Million Two Hundred Fifty-Eight Thousand Six Hundred Ninety-Six (8,258,696) shares of Preferred Stock have been designated as Series A-3<sup>1</sup> Convertible Preferred Stock (the "Series A-3<sup>1</sup> Preferred"), Sixteen Million Three Hundred Eleven Thousand One Hundred Sixty-Seven (16,311,167) shares of Preferred Stock have been designated as Series A-4 Convertible Preferred Stock (the "Series A-4 Preferred"), Sixteen Million Three Hundred Eleven Thousand One Hundred Sixty-Seven (16,311,167) shares of Preferred Stock have been designated as Series A-4<sup>1</sup> Convertible Preferred Stock (the "Series A-4<sup>1</sup> Preferred"), Twenty-Nine Million Three Hundred Ninety-Three Thousand Nine Hundred Eighty-Seven (29,393,987) shares of Preferred Stock have been designated as Series A-5 Convertible Preferred Stock (the "Series A-5 Preferred"), Twenty-Nine Million Three Hundred Ninety-Three Thousand Nine Hundred Eighty-Seven (29,393,987) shares of Preferred Stock have been designated as Series A-5<sup>1</sup> Convertible Preferred Stock (the "Series A-5<sup>1</sup> Preferred"), Sixteen Million Three Hundred Fifty-Four Thousand Four Hundred Ninety-Four (16,354,494) shares of Preferred Stock have been designated as Series B-1 Convertible Preferred Stock (the "Series B-1 Preferred"), Sixteen Million Three Hundred Fifty-Four Thousand Four Hundred Ninety-Four (16,354,494) shares of Preferred Stock have been designated as Series B-1<sup>1</sup> Convertible Preferred Stock (the "Series B-1<sup>1</sup> Preferred"), and Seventy Million One Hundred Thirteen Thousand Nine Hundred Thirty-Five (70,113,935) shares of Preferred Stock have been designated as Series B-2 Convertible Preferred Stock (the "Series B-2 Preferred").

Immediately upon the filing of this Eighth Amended and Restated Articles of Incorporation, each ten (10) outstanding shares of Common Stock, each ten (10) outstanding shares of Series A-1<sup>1</sup> Preferred, each ten (10) outstanding shares of Series A-2<sup>1</sup> Preferred, each ten (10) outstanding shares of Series A-3<sup>1</sup> Preferred, each ten (10) outstanding shares of Series A-4<sup>1</sup> Preferred, each ten (10) outstanding shares of Series A-5<sup>1</sup> Preferred, each ten (10) outstanding shares of Series B-1<sup>1</sup> Preferred, and each ten (10) outstanding shares of Series B-2 Preferred will be exchanged and combined, automatically and without further action, into one (1) share of Common Stock, one (1) share of Series A-1<sup>1</sup> Preferred, one (1) share of Series A-2<sup>1</sup> Preferred, one (1) share of Series A-3<sup>1</sup> Preferred, one (1) share of Series A-4<sup>1</sup> Preferred, one (1) share of Series A-5<sup>1</sup> Preferred, one (1) share of Series B-1<sup>1</sup> Preferred, and one (1) share of Series B-2 Preferred, respectively (the "Reverse Stock Split"). The Reverse Stock Split shall also apply to any outstanding securities or rights convertible into, or exchangeable or exercisable for, Common Stock or Preferred Stock of the Corporation. The Reverse Stock Split shall be effected on a certificate-by-certificate basis and no fractional shares shall be issued upon the exchange and combination. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay an amount of cash equal to the product of (i) the fractional share to which the holder would otherwise be entitled and (ii) the then fair value of a share as determined in good faith by the Board of Directors of the Corporation.

Following the Reverse Stock Split, this Corporation is authorized to issue two classes of stock, designated "Common Stock" and "Preferred Stock," respectively. The total number of shares of Common Stock this Corporation is authorized to issue is Fifty Million (50,000,000). The total number of shares of Preferred Stock this Corporation is authorized to issue is Thirty-Five Million Eight Hundred Seventy-Nine Thousand One Hundred Nineteen (35,879,119).

Following the Reverse Stock Split, there are hereby authorized fifteen series of Preferred Stock designated in the following amounts: Nine Thousand Sixty-Two (9,062) shares of the Series A-1<sup>1</sup> Preferred, Nine Thousand Sixty-Two (9,062) shares of Preferred Stock have been designated as Series AA-1 Convertible Preferred Stock (the "Series AA-1 Preferred"), Eight Hundred Eighty-Five Thousand Five Hundred Ninety-One (885,591) shares of the Series A-2<sup>1</sup> Preferred, Eight Hundred Eighty-Five Thousand Five Hundred Ninety-One (885,591) shares of Preferred Stock have been designated as Series AA-2 Convertible Preferred Stock (the "Series AA-2 Preferred"), Eight Hundred Twenty-Five Thousand Eight Hundred Sixty-Nine (825,869) shares of the Series A-3<sup>1</sup> Preferred, Eight Hundred Twenty-Five Thousand Eight Hundred Sixty-Nine (825,869) shares of Preferred Stock have been designated as Series AA-3 Convertible Preferred Stock (the "Series AA-3 Preferred"), One Million Six Hundred Thirty-One Thousand One Hundred Sixteen (1,631,116) shares of the Series A-4<sup>1</sup> Preferred, One Million Six Hundred Thirty-One Thousand One Hundred Sixteen (1,631,116) shares of Preferred Stock have been designated as Series AA-4 Convertible Preferred Stock (the "Series AA-4 Preferred"), Two Million Nine-Hundred Thirty-Nine Thousand Three Hundred Ninety-Eight (2,939,398) shares of the Series A-5<sup>1</sup> Preferred, Two Million Nine-Hundred Thirty-Nine Thousand Three Hundred Ninety-Eight (2,939,398) shares of Preferred Stock have been designated as Series AA-5 Convertible Preferred Stock (the "Series AA-5 Preferred"), One Million Six Hundred Thirty-Five Thousand Four Hundred Forty-Nine (1,635,449) shares of the Series B-1<sup>1</sup> Preferred, One Million Six Hundred Thirty-Five Thousand Four Hundred Forty-Nine (1,635,449) shares of Preferred Stock have been designated as Series BB-1 Convertible Preferred Stock (the "Series BB-1 Preferred"), Seven Million Eleven Thousand Three Hundred Ninety-Three (7,011,393) shares of the Series B-2<sup>1</sup> Preferred, Seven Million Eleven Thousand Three Hundred Ninety-Three (7,011,393) shares of Preferred Stock have been designated as Series BB-2 Convertible Preferred Stock (the "Series BB-2 Preferred"), and Six Million Three Thousand Three Hundred Sixty-Three (6,003,363) shares of Preferred Stock have been designated as Series C Preferred. In Article IV(A), the Series A-1<sup>1</sup> Preferred, Series A-2<sup>1</sup> Preferred, Series A-3<sup>1</sup> Preferred, Series A-4<sup>1</sup> Preferred, Series A-5<sup>1</sup> Preferred, Series B-1<sup>1</sup> Preferred and the Series B-2<sup>1</sup> are collectively referred to as the "Preferred Stock" and in Article IV(B), the Series AA-1 Preferred, Series AA-2 Preferred, Series AA-3 Preferred, Series AA-4 Preferred, Series AA-5 Preferred, Series BB-1 Preferred, Series BB-2 Preferred and Series C Convertible Preferred Stock (the "Series C Preferred") are collectively referred to as the "Preferred Stock."

All further references to numbers of shares (other than as set forth in Article VI(4)) and all further amounts stated on a per share basis contained in these Eighth Amended and Restated Articles of Incorporation are referenced and stated after giving effect to the Reverse Stock Split.

The rights, privileges, preferences, powers and other matters relating to (i) the Series A-1<sup>1</sup> Preferred, Series A-2<sup>1</sup> Preferred, Series A-3<sup>1</sup> Preferred, Series A-4<sup>1</sup> Preferred, Series A-5<sup>1</sup> Preferred, Series B-1<sup>1</sup> Preferred and Series B-2 Preferred are set forth below in Article IV(A), and (ii) the Series AA-1 Preferred, Series AA-2 Preferred, Series AA-3 Preferred, Series AA-4 Preferred, Series AA-5 Preferred, Series BB-1 Preferred, Series BB-2 Preferred and Series C Preferred are set forth below in Article IV(B). All defined terms in Article IV(A) have the meaning given to such terms in Article IV(A) and cross references in Article IV(A) refer to other sections or subsections in Article IV(A) unless otherwise indicated. All defined terms in Article IV(B) have the meaning given to such terms in Article IV(B) and cross references in Article IV(B) refer to other sections or subsections in Article IV(B) unless otherwise indicated.

## ARTICLE IV.

A. The provisions set forth in this Article IV(A) shall be in effect until the initial issuance of a share of Series C Preferred and the related automatic conversion into Common Stock of the then-outstanding shares of Series A-1<sup>1</sup> Preferred, Series A-2<sup>1</sup> Preferred, Series A-3<sup>1</sup> Preferred, Series A-4<sup>1</sup> Preferred, Series A-5<sup>1</sup> Preferred, Series B-1<sup>1</sup> Preferred and Series B-2 Preferred in accordance with Section 3(b)(ii) of this Article IV(A), at which time the provisions in this Article IV(A) shall have no further force and effect.

### 1. Dividends.

The holders of the Preferred Stock (other than the Series A-1<sup>1</sup> Preferred) shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board of Directors"), dividends out of funds legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock of the Company, at the rate of (a) \$0.4120 per annum for each share of Series A-2<sup>1</sup> Preferred, (b) \$0.6880 per annum for each share of Series A-3<sup>1</sup> Preferred, (c) \$0.1910 per annum for each share of Series A-4<sup>1</sup> Preferred, (d) \$0.1470 per annum for each share of Series A-5<sup>1</sup> Preferred, (e) \$0.1470 per annum for each share of Series B-1<sup>1</sup> Preferred, and (f) \$0.0910 per annum for each share of Series B-2 Preferred, respectively, then held by them (as adjusted for stock splits, stock dividends or distributions, recapitalizations, and similar events occurring after the effectiveness of these Amended and Restated Articles of Incorporation); such dividends are referred to as the "Senior Dividends". Such dividends shall not be cumulative and no right to such dividends shall accrue to holders of Preferred Stock unless declared by the Board of Directors. No dividends or other distributions shall be made with respect to the Common Stock, other than dividends payable solely in Common Stock, unless at the same time an equivalent dividend per Common Stock equivalent share with respect to the Preferred Stock is paid, in addition to the Senior Dividends. No dividends or other distributions shall be made with respect to the Series A-1<sup>1</sup> Preferred, unless at the same time an equivalent dividend per Common Stock equivalent share with respect to the other Preferred Stock is paid, in addition to the Senior Dividends.

### 2. Liquidation Preference.

(a) The Series B-2 Preferred. In the event of any Liquidation (as defined below) of this Corporation, either voluntary or involuntary, the holders of Series B-2 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series B-1<sup>1</sup> Preferred, Series A-5<sup>1</sup> Preferred, Series A-4<sup>1</sup> Preferred, Series A-3<sup>1</sup> Preferred, Series A-2<sup>1</sup> Preferred, Series A-1<sup>1</sup> Preferred and the Common Stock, an amount equal to \$1.1410 per share for each share of Series B-2 Preferred then held by them (as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on the Series B-2 Preferred (the "Series B-2 Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Series B-2 Preferred the full Series B-2 Preference, the holders of the Series B-2 Preferred shall share ratably in any distribution of assets according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(b) The Series B-2 Preferred and Series B-1<sup>1</sup> Preferred. Subject to the rights of the Series B-2 Preferred as set forth in clause (a) above, in the event of any Liquidation of this Corporation, either voluntary or involuntary, the holders of Series B-2 Preferred and the Series B-1<sup>1</sup> Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A-5<sup>1</sup> Preferred, Series A-4<sup>1</sup> Preferred, Series A-3<sup>1</sup> Preferred, Series A-2<sup>1</sup> Preferred, Series A-1<sup>1</sup> Preferred and the Common Stock, an amount equal to \$0.5710 per share for each share of Series B-2 Preferred then held by them and \$1.8390 per share for each share of Series B-1<sup>1</sup> Preferred then held by them (as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on the Series B-1 Preferred (the "Series B Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Series B-2 Preferred and Series B-1<sup>1</sup> Preferred the full Series B Preference, the holders of the Series B-2 Preferred and Series B-1<sup>1</sup> Preferred shall share ratably in any distribution of assets, after payment of the Series B-2 Preference, according to the respective amounts which would be payable pursuant to this clause (b) in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(c) The Series A-5<sup>1</sup> Preferred. Subject to the rights of the Series B-2 Preferred and Series B-1<sup>1</sup> Preferred as set forth in clauses (a) and (b) above, in the event of any Liquidation of this Corporation, either voluntary or involuntary, the holders of Series A-5<sup>1</sup> Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A-4<sup>1</sup> Preferred, Series A-3<sup>1</sup> Preferred, Series A-2<sup>1</sup> Preferred, Series A-1<sup>1</sup> Preferred and the Common Stock, an amount equal to \$1.8390 per share for each share of Series A-5<sup>1</sup> Preferred then held by them (as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on the Series A-5<sup>1</sup> Preferred (the "Series A-5<sup>1</sup> Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Series A-5<sup>1</sup> Preferred the full Series A-5<sup>1</sup> Preference, the holders of the Series A-5<sup>1</sup> Preferred shall share ratably in any remaining distribution of assets, after payment of the Series B-2 Preference and the Series B Preference, according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(d) The Junior Preferred. Subject to the rights of the Series B-2 Preferred, Series B-1<sup>1</sup> Preferred and the Series A-5<sup>1</sup> Preferred as set forth in clauses (a), (b) and (c) above, in the event of any Liquidation of this Corporation, either voluntary or involuntary, the holders of the Series A-4<sup>1</sup> Preferred, the Series A-3<sup>1</sup> Preferred and the Series A-2<sup>1</sup> Preferred (collectively, the "Junior Preferred") shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A-1<sup>1</sup> Preferred and Common Stock, an amount equal to \$2.3910 per share for each share of Series A-4<sup>1</sup> Preferred then held by them, \$8.5970 per share for each share of Series A-3<sup>1</sup> Preferred then held by them and \$5.150 per share for each share of Series A-2<sup>1</sup> Preferred then held by them (each as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on such shares (the "Junior Preferred Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Junior Preferred the full Junior Preferred Preference, the holders of the Junior Preferred shall share ratably in any remaining distribution of assets, after payment of the Series B-2 Preference, the Series B Preference and the

Series A-5<sup>1</sup> Preference, according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(e) Preferred Stock and Common Stock. Upon the completion of the distributions required by Sections 2(a), (b), (c) and (d) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Preferred Stock and the holders of the Common Stock, pro rata based on the number of shares of Common Stock (on an as converted basis) held by each.

(f) "Liquidation" shall mean (A) a liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary; (B) a sale, lease, license or other transfer of all or substantially all of this Corporation's assets or the exclusive license or lease of substantially all of its intellectual property; (C) a sale, transfer or exchange of 50% or more of this Corporation's outstanding stock in one transaction or a series of related transactions, which, if issued at the same time, would constitute a transfer of 50% or more of the outstanding voting power of this Corporation or (D) a consolidation, merger or reorganization of this Corporation with or into any other entity if this Corporation's shareholders do not control a majority of the outstanding voting securities of such consolidated, merged or reorganized entity; provided, however, that any event described in (A), (B), (C) or (D) above shall not be deemed to be a Liquidation under this Section 2 in the event that the holders of at least two-thirds of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, and holders of at least two-thirds of the Series B-2 Preferred, voting as a separate class, and a majority of the directors of the Board of Directors determine that such action should not be deemed a Liquidation.

(g) Any securities to be delivered to the holders of Preferred Stock pursuant to Section 2(a), (b), (c), (d) or (e) above shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 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 are applicable) over the 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 by the Corporation.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subsections 2(g)(i)(1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of a majority of the voting

power of the then outstanding shares of each relevant series of Preferred Stock entitled to receive such securities, each such series voting as a separate class.

(h) In the event the requirements of Section 2 are not complied with, the Corporation shall forthwith either:

(i) cause the closing of the applicable transaction to be postponed until such time as the requirements of this Section 2 have been complied with, or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 3(h) hereof.

(i) As authorized by Section 402.5(c) of the California Corporations Code, any distribution made as described in paragraphs (1) and (2) of Section 500(a) of the California Corporations Code with respect to repurchase by the Corporation of shares of Common Stock issued to or held by employees or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase may be made without regard to the preferential dividends arrears amounts and/or preferential rights amounts.

### 3. Conversion.

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

(a) Right to Convert. Each share of Preferred Stock shall not be convertible until the earlier of (x) May 15, 2014, and (y) an earlier date specified by the vote or written consent of holders of at least two-thirds of the then outstanding Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, and the holders of at least two-thirds of the Series B-2 Preferred, voting as a separate class. From and after such date, each share of Preferred Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock. Each share of Preferred Stock shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Conversion Price (as defined with respect to each series of the Preferred Stock in this Section 3(a) and as may be adjusted pursuant to the operation of Section 3(d)(ii)) per share then in effect for that series of Preferred Stock into the per share Conversion Value (as hereinafter defined with respect to each series of Preferred Stock).

The Conversion Price per share of Series B-2 Preferred shall be initially \$1.1410, and the per share Conversion Value of Series B-2 Preferred shall be \$1.1410. The Conversion Price per share of Series B-1<sup>1</sup> Preferred shall be initially \$1.1410, and the per share Conversion Value of Series B-1<sup>1</sup> Preferred shall be \$1.1410. The Conversion Price per share of Series A-5<sup>1</sup> Preferred shall be initially \$1.1410, and the per share Conversion Value of Series A-5<sup>1</sup> Preferred shall be \$1.1410. The Conversion Price per share of Series A-4<sup>1</sup> Preferred shall be initially \$1.1410, and the per share

Conversion Value of Series A-4<sup>1</sup> Preferred shall be \$1.1410. The Conversion Price per share of Series A-3<sup>1</sup> Preferred shall be initially \$1.1410, and the per share Conversion Value of Series A-3<sup>1</sup> Preferred shall be \$1.1410. The Conversion Price per share of Series A-2<sup>1</sup> Preferred shall be initially \$1.1410, and the per share Conversion Value of Series A-2<sup>1</sup> Preferred shall be \$1.1410. The Conversion Price per share of Series A-1<sup>1</sup> Preferred shall be initially \$1.1410, and the per share Conversion Value of Series A-1<sup>1</sup> Preferred shall be \$1.1410. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as provided below. The number of shares of Common Stock to which a share of Preferred Stock is convertible is hereinafter referred to as the Conversion Rate of such share.

(b) Automatic Conversion.

(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate for the respective series of Preferred Stock upon the earlier of (A) the date specified by the vote or written consent of the holders of at least two-thirds of the then-outstanding shares of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, and the holders of at least two-thirds of the Series B-2 Preferred, voting as a separate class or (B) the closing of a firm commitment 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 Corporation with an aggregate offering price of not less than \$25,000,000. In the event of the automatic conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of the sale of securities in such public offering.

(ii) Immediately prior to the issuance of the Series C Preferred, each share of Preferred Stock shall automatically be converted into Common Stock at a rate of seven and one-half (7.5) shares of Preferred Stock for every one (1) share of Common Stock.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the fair value of such fraction. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same. In the event of an automatic conversion pursuant to Section 3(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates with respect to shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and



indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted; in the case of automatic conversion pursuant to subsection 3(b)(A), on the date requisite consent or agreement of the minimum required percentage of holders shall have been obtained; or, in the case of automatic conversion pursuant to subsection 3(b)(B), immediately prior to the closing of the public offering. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Adjustments for Diluting Issues.

(i) Special Definitions. For purposes of this Section 3(d), the following definitions shall apply:

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

(2) 'Original Issue Date' shall mean the date of initial issuance of a share of the Series B-2 Preferred.

(3) 'Convertible Securities' shall mean any evidence of indebtedness, shares or other securities (other than Common Stock) convertible into or exchangeable for Common Stock.

(4) 'Additional Shares of Common Stock' shall mean all shares of Common Stock and Convertible Securities issued by the Corporation after the Original Issue Date, other than:

(A) shares of Common Stock issued (i) upon conversion of the shares of Preferred Stock authorized herein, including shares of Common Stock deemed to be issued upon the original issuance of the Preferred Stock, or (ii) upon conversion of Convertible Securities, provided that such Convertible Securities (other than the Preferred Stock) shall be deemed to be Additional Shares of Common Stock;

(B) shares of Common Stock and Options to purchase shares of Common Stock (appropriately adjusted for stock splits, recapitalizations and the like) issuable or issued (and not repurchased at cost by the Corporation in connection with the termination of employment) to employees, officers, directors, consultants, contractors or advisors of the Corporation pursuant to a stock option plan adopted by the Corporation and approved by its shareholders; provided, however, that the number of shares of Common Stock and Options to purchase shares of Common Stock does not exceed 4,869,071 shares in the aggregate (including shares of Common Stock issued upon exercise of outstanding options), as such number may be

increased from time to time with the approval of holders of two-thirds of the then outstanding shares of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis and approval of holders of two-thirds of the then outstanding shares of Series B-2 Preferred, voting as a separate class;

(C) shares of Common Stock and Convertible Securities issued or issuable as a dividend or distribution on Preferred Stock;

(D) shares of Common Stock and Convertible Securities issued in connection with any equipment lease, bank credit arrangements, technology license, vendor or customer relationship or similar non-equity financing transaction pursuant to approval by a majority of the Board of Directors;

(E) shares of Common Stock and Convertible Securities issued or issuable by way of a transaction described in Sections 3(d)(iv) through 3(d)(vi) below;

(F) shares of Common Stock and Convertible Securities issued or issuable upon the exercise of warrants or other rights issued or issuable by the Corporation on or prior to the Original Issue Date;

(G) shares of Common Stock and Convertible Securities issued or issuable in connection with a business acquisition by the Corporation pursuant to approval by a majority of the Board of Directors; and

(H) shares of Common Stock and Convertible Securities issued or issuable by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (A), (B), (C), (D), (E), (F), (G) or this clause (H).

(ii) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(1) Adjustment of Series B-2 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series B-2 Preferred, then in such event, the then current Conversion Price of the Series B-2 Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series B-2 Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series B-2 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(1), all shares of Common Stock issuable upon conversion of outstanding

Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(2) Adjustment of Series B-1<sup>1</sup> Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series B-1<sup>1</sup> Preferred, then in such event, the then current Conversion Price of the Series B-1<sup>1</sup> Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series B-1<sup>1</sup> Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series B-1<sup>1</sup> Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(2), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(3) Adjustment of Series A-5<sup>1</sup> Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series A-5<sup>1</sup> Preferred, then in such event, the then current Conversion Price of the Series A-5<sup>1</sup> Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series A-5<sup>1</sup> Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series A-5<sup>1</sup> Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(3), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(4) Adjustment of Series A-4<sup>1</sup> Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series A-4<sup>1</sup> Preferred, then in such event, the then current Conversion Price of the Series A-4<sup>1</sup> Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series A-4<sup>1</sup> Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series A-4<sup>1</sup> Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of

such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(4), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(5) Adjustment of Series A-3<sup>1</sup> Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series A-3<sup>1</sup> Preferred, then in such event, the then current Conversion Price of the Series A-3<sup>1</sup> Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series A-3<sup>1</sup> Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series A-3<sup>1</sup> Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(5), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(6) Adjustment of Series A-2<sup>1</sup> Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series A-2<sup>1</sup> Preferred, then in such event, the then current Conversion Price of the Series A-2<sup>1</sup> Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series A-2<sup>1</sup> Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series A-2<sup>1</sup> Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(6), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(7) Adjustment of Series A-1<sup>1</sup> Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series A-1<sup>1</sup> Preferred, then in such event, the then current Conversion Price of the Series A-1<sup>1</sup> Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series A-1<sup>1</sup> Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then

current Conversion Price of the Series A-1<sup>1</sup> Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(7), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(iii) Determination of Consideration. For purposes of this Section 3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(I) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation 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; and

(C) in the event Additional Shares of Common Stock are issued in conjunction with other shares or securities or other assets of the Corporation for consideration which 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.

(2) Options and Convertible Securities. In the case of issuance of Options and Convertible Securities, the following provisions shall apply for all purposes of Section 3(d) except for clause (iv):

(A) The aggregate maximum number of shares of Common Stock or Convertible Securities deliverable upon exercise of such Options for Common Stock shall be deemed to have been issued at the time such Options were issued and for a consideration per share equal to the consideration (determined in the manner provided in subparagraph 3(d)(iii)(1)), if any, received by the Corporation upon the issuance of such Option plus the exercise price provided in such Option for the Common Stock or Convertible Securities covered thereby.

(B) The aggregate maximum number of shares of Common Stock deliverable upon conversion or in exchange for such Convertible Securities or upon the exercise of Options for such Convertible Securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such Convertible Securities were issued or such Options were issued and for a consideration per share equal to the consideration, if any, received by the Corporation for each share or unit of any such Convertible Securities and related Options (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange

of each share or unit of such Convertible Securities or the exercise of any related Options (the consideration in each case to be determined in the manner provided in subparagraph 3(d)(iii)(1)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such Options or upon conversion of or in exchange for such Convertible Securities, excluding a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such Options or the conversion or exchange of such Convertible Securities.

(D) Upon the expiration of any such Options, the termination of any such Convertible Securities or the expiration of any Options related to such Convertible Securities, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Convertible Securities which remain in effect) actually issued upon the conversion or exchange of such Convertible Securities or upon the exercise of the Options related to such Convertible Securities.

(E) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subparagraphs 3(d)(iii)(2)(A) and (B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subparagraph 3(d)(iii)(2)(C) or (D).

(iv) Adjustments for Subdivisions, Combinations or Stock Dividends of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, or otherwise), at any time after the Original Issue Date into a greater number of shares of Common Stock, or the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, the Conversion Price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such subdivision or stock dividend, be proportionately decreased based on the ratio of (i) the number of shares of Common Stock outstanding immediately after such subdivision or stock dividend to (ii) the number of shares of Common Stock outstanding immediately prior to such subdivision or stock dividend. 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 Conversion Price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased on the same basis.

(v) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in (i) securities of the Corporation (other than shares of Common Stock and other than as otherwise adjusted in this Section 3 or as otherwise provided in Section 1), or (ii) evidences of indebtedness issued by the Corporation or other persons, or (iii) assets (excluding cash dividends) or options or rights not constituting Options, then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon

conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of such distribution which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 3 with respect to the rights of the holders of the Preferred Stock.

(vi) Adjustments for Recapitalization, Reclassification, Exchange and Substitution. If at any time or from time to time the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, capital reorganization, reclassification or otherwise (other than a subdivision, combination of shares or merger or sale of assets transaction provided for above or in Section 2), the Conversion Rate then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such recapitalization, reorganization or reclassification, be proportionately adjusted such that the respective series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders thereof would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such series of Preferred Stock immediately before that change. In addition, to the extent applicable in any reorganization, recapitalization, reclassification or other event, 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 reorganization, recapitalization, reclassification or other event.

(e) No Impairment. The Corporation will not, without the appropriate vote of the shareholders under the General Corporation Law and Section 6 of this Article IV, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price or the Conversion Rate of any series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series 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 a series 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 and the Conversion Rate at the time in effect and applicable to such series, 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 such series.

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

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

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

(ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(iii) to effect any reclassification or recapitalization of its capital stock outstanding involving a change in the outstanding capital stock; or

(iv) to undertake a Liquidation;

then, in connection with each such event, the Corporation shall send to the holders of each series of Preferred Stock:

(1) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto and the amount and character of such dividend, distribution or right); and

(2) in the case of the matters referred to in (iii) and (iv) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of each series of Preferred Stock at the address for each such holder as shown on the books of this Corporation.

(i) Reissuance of Converted Shares. No shares of Preferred Stock which have been converted into Common Stock after the original issuance thereof shall ever again be reissued and all



such shares of Preferred Stock so converted shall upon such conversion cease to be a part of the authorized shares of the Corporation.

#### 4. Redemption.

(a) Redemption of Preferred Stock. The Corporation shall not have the right to call or redeem at any time all or any shares of the Preferred Stock. The holders of the Preferred Stock shall have redemption rights as follows (the "Redemption Rights"):

(i) At any time after four years from the first issuance of the Series B-2 Preferred, upon the election of the holders of at least two-thirds of the then outstanding shares of the Preferred Stock and holders of two-thirds of the then outstanding shares of Series B-2 Preferred, each voting as a separate class on an as-converted into Common Stock basis, (the "Redemption Request"), the Corporation shall redeem all issued, outstanding and unconverted shares of Preferred Stock at the applicable Redemption Price (as defined below) as provided herein from any source of funds legally available therefor. Subject to the election of the holders of the Preferred Stock provided above, the Corporation shall redeem all shares of Preferred Stock outstanding as of the date of such election upon payment of the Redemption Price for the shares so redeemed no later than 45 days after the receipt of a Redemption Request (the "Redemption Date"). If the funds of the Corporation legally available for redemption of the Preferred Stock on the Redemption Date are insufficient to redeem the total number of outstanding shares of Preferred Stock on the Redemption Date, those funds which are legally available will be used to redeem the maximum number of shares of the Preferred Stock ratably among the holders of the Preferred Stock in the following order (1) two-thirds of the shares of Series B-2 Preferred Stock held by each holder of Series B-2 Preferred Stock, (2) all remaining outstanding shares of Series B-2 Preferred Stock held by each holder of Series B-2 Preferred Stock and shares of Series B-1<sup>1</sup> Preferred, (3) shares of Series A-5<sup>1</sup> Preferred, (4) shares of Series A-4<sup>1</sup> Preferred, Series A-3<sup>1</sup> Preferred and Series A-2<sup>1</sup> Preferred and (5) Series A-1<sup>1</sup> Preferred. If, and only if, no funds or insufficient funds are available to the Corporation at the Redemption Date to meet the Corporation's redemption obligations pursuant to this Section 4(a)(i), then the Corporation's obligations to redeem shares of the Preferred Stock shall continue and at any time thereafter when additional funds of the Corporation are legally available for the redemption of the Preferred Stock, the Corporation, within ten (10) business days of the availability of such funds, shall use such funds to redeem the balance of the shares which the Corporation has become obligated to redeem on the Redemption Date but which it has not redeemed. The shares of the Preferred Stock that have not been redeemed shall continue to be entitled to the dividend, conversion and other rights, preferences, privileges and restrictions applicable to each series of Preferred Stock.

(ii) The redemption price for each share of the Series B-2 Preferred repurchased (the "Series B-2 Redemption Price") shall be equal to \$1.7120 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series B-2 Preferred). The redemption price for each share of the Series B-1<sup>1</sup> Preferred repurchased (the "Series B-1<sup>1</sup> Redemption Price") shall be equal to \$1.8390 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series B-1<sup>1</sup> Preferred). The redemption price for each share of the Series A-5<sup>1</sup> Preferred repurchased (the "Series A-5<sup>1</sup> Redemption Price") shall be equal to \$1.8390 for each such share to be redeemed (as adjusted for

any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series A-5<sup>1</sup> Preferred). The redemption price for each share of the Series A-4<sup>1</sup> Preferred repurchased (the "Series A-4<sup>1</sup> Redemption Price") shall be equal to \$2.3910 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series A-4<sup>1</sup> Preferred). The redemption price for each share of the Series A-3<sup>1</sup> Preferred repurchased (the "Series A-3<sup>1</sup> Redemption Price") shall be equal to \$8.5970 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series A-3<sup>1</sup> Preferred). The redemption price for each share of the Series A-2<sup>1</sup> Preferred repurchased (the "Series A-2<sup>1</sup> Redemption Price") shall be equal to \$5.1500 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series A-2<sup>1</sup> Preferred). The redemption price for each share of the Series A-1<sup>1</sup> Preferred repurchased (the "Series A-1<sup>1</sup> Redemption Price") shall be equal to \$1.8390 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series A-1<sup>1</sup> Preferred).

(iii) Within ten (10) business days of the Corporation's receipt of a Redemption Request, the Corporation will mail written notice to each holder of record of shares of each series of Preferred Stock, at the address for such holder as it appears on the stock transfer books of the Corporation, notifying such holder of the redemption, specifying the Redemption Date upon which the Corporation shall satisfy the Redemption Request, the applicable Redemption Price, the place at which payment may be obtained and the date on which such holder's conversion rights as to such shares terminate, and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). On or after the Redemption Date, each holder of shares to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares to be redeemed, 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 order of the person whose name appears on such certificate or certificates as the owner thereof. In the event that less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iv) 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 the shares thereupon redeemed, as holders of shares of Preferred Stock (except the right to receive the Redemption Price upon surrender of their certificate or certificates), shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this Corporation or be deemed to be outstanding for any purpose whatsoever. The shares not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein.

(v) If there has been a default in the payment of the Redemption Price, then during the period from the Redemption Date through the date on which such shares of Preferred Stock are redeemed, the Redemption Price of such shares not redeemed will bear interest at a per-annum rate equal to the lower of 8% or the highest rate permitted by law.

## 5. Voting Rights.

(a) Vote Other Than for Directors. Holders of each series of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall vote together with the holders of Common Stock and not as a separate class except as otherwise required by law, or provided herein. Except as otherwise required by law or as provided herein, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the shareholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number. Holders of Common Stock and Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation.

(b) Voting for Directors. The Board of Directors shall consist of seven (7) members. At any time as any shares of Preferred Stock remain outstanding, the holders of the shares of Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, shall be entitled to elect four (4) directors (the "Preferred Stock Directors"). The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) directors (the "Common Directors"). The holders of the Preferred Stock and Common Stock, with such holders voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect one (1) director (the "Mutual Director"). A vacancy on the Board of Directors occurring because of the death, resignation or removal of a Preferred Stock Director shall be filled by the vote or written consent of the holders of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis. A vacancy on the Board of Directors occurring because of the death, resignation or removal of a Common Director shall be filled by the vote or written consent of the holders of the Common Stock, voting as a separate class. A vacancy on the Board of Directors occurring because of the death, resignation or removal of a Mutual Director shall be filled by the vote or written consent of the holders of the Preferred Stock and Common Stock, with such holders voting together as a single class on an as-converted to Common Stock basis. A Preferred Stock Director, a Common Director, or a Mutual Director may be removed from the Board of Directors with or without cause by the vote or consent of the holders of the outstanding class or series with voting power entitled to elect him in accordance with this Section 5(b) and the California Corporations Code.

(c) Voting for Directors in the Event of Default under Section 4. In the event that the Corporation is in default of its obligations to redeem the Preferred Stock, the holders of a majority of the Preferred Stock shall be entitled to elect the Common Directors until such time as the Company is no longer in default pursuant to Section 4. Thereafter, the Common Directors will be elected as provided in Section 5(b) above.

## 6. Covenants.

In addition to any other rights provided by law, at any such time as at least 600,000 shares of Preferred Stock remain outstanding (as adjusted for stock splits, stock dividends or distributions, recapitalizations, and similar events), the Corporation shall not (whether by merger, consolidation or otherwise), without first obtaining the affirmative vote or written consent of the holders of at least two-thirds of the then outstanding shares of Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, and the holders of at least two-thirds of the then outstanding shares of Series B-2 Preferred, voting as a separate class:

(a) amend or waive any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws, as amended, if such action would amend or waive, alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of any series of the Preferred Stock;

(b) authorize or issue shares of any series or class of stock having any preference or priority (including, but not limited to, voting, dividends, redemption, conversion or liquidation) superior to or on a parity with any such preference or priority of the Series A-1<sup>1</sup> Preferred, the Series A-2<sup>1</sup> Preferred, the Series A-3<sup>1</sup> Preferred, the Series A-4<sup>1</sup> Preferred, the Series A-5<sup>1</sup> Preferred, the Series B-1<sup>1</sup> Preferred or the Series B-2 Preferred, or authorize shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Corporation having any preference or priority (including, but not limited to, voting, dividends, redemption, conversion or liquidation) superior to or on a parity with any such preference or priority of the Series A-1<sup>1</sup> Preferred, the Series A-2<sup>1</sup> Preferred, the Series A-3<sup>1</sup> Preferred, the Series A-4<sup>1</sup> Preferred, the Series A-5<sup>1</sup> Preferred, the Series B-1<sup>1</sup> Preferred or the Series B-2 Preferred;

(c) purchase, redeem or otherwise acquire (or pay into or set aside for a sinking fund for such purpose), any of the Common Stock or the Preferred Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock at cost from directors, officers, consultants or employees of the Corporation or any subsidiary pursuant to equity incentive agreements approved by the Corporation's Board of Directors under which the Corporation has the option to repurchase such shares upon the termination of employment or services, or pursuant to a contractual right of first refusal, or pursuant to the provisions of the Articles of Incorporation;

(d) effect a recapitalization, reorganization, merger or consolidation of the Corporation (but excluding any merger effected solely for the purpose of reincorporating in another state), or the merger of any other corporation or corporations, partnership or partnerships, limited liability company or companies or any other entity or entities into the Corporation; a sale, license, grant of security interest in or transfer of all or substantially all of the assets of the Corporation or its intellectual property or any similar transaction; a share exchange; or the undertaking by the Corporation of a transaction or series of transactions or an acquisition in which more than 50% of the voting power of the Corporation is disposed of;

(e) increase or decrease the authorized number of shares of Common Stock or Preferred Stock or any series thereof;

(f) authorize or take any action that would result in the payment or declaration of any dividend or distribution on any shares of the Corporation's equity securities;

(g) permit any subsidiary of the Corporation in which the Corporation holds a controlling voting interest to (i) sell or issue any equity security to any party other than the Corporation; or (ii) grant a security interest in all or substantially all its assets or intellectual property; or

(h) authorize or take any action with respect to a Liquidation; or

(i) create any direct or indirect subsidiary.

#### 7. Common Stock.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2(f) above.

(c) Redemption. The Common Stock is not redeemable at the option of the holder thereof.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

B. The provisions set forth in this Article IV(B) shall take effect automatically upon the first issuance of any shares of Series C Preferred.

#### 1. Dividends.

The holders of the Preferred Stock (other than the Series AA-1 Preferred) shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board of Directors"), dividends out of funds legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock of the Company, at the rate of (a) \$0.4120 per annum for each share of Series AA-2 Preferred, (b) \$0.6880 per annum for each share of Series AA-3 Preferred, (c) \$0.1910 per annum for each share of Series AA-4 Preferred, (d) \$0.1470 per annum for each share of Series AA-5 Preferred, (e) \$0.1470 per annum for each share of Series BB-1 Preferred, (f) \$0.0910 per annum for each share of Series BB-2 Preferred and (g) \$0.0892 per annum for each share of Series C Preferred, respectively, then held by them (as adjusted for stock splits, stock dividends or distributions, recapitalizations, and similar events occurring after the effectiveness of these Amended and Restated Articles of Incorporation); such dividends are referred

to as the "Senior Dividends". Such dividends shall not be cumulative and no right to such dividends shall accrue to holders of Preferred Stock unless declared by the Board of Directors. No dividends or other distributions shall be made with respect to the Common Stock, other than dividends payable solely in Common Stock, unless at the same time an equivalent dividend per Common Stock equivalent share with respect to the Preferred Stock is paid, in addition to the Senior Dividends. No dividends or other distributions shall be made with respect to the Series AA-1 Preferred, unless at the same time an equivalent dividend per Common Stock equivalent share with respect to the other Preferred Stock is paid, in addition to the Senior Dividends.

## 2. Liquidation Preference.

(a) The Series C Preferred. In the event of any Liquidation (as defined below) of this Corporation, either voluntary or involuntary, the holders of Series C Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series BB-2 Preferred, Series BB-1 Preferred, Series AA-5 Preferred, Series AA-4 Preferred, Series AA-3 Preferred, Series AA-2 Preferred, Series AA-1 Preferred and the Common Stock, an amount equal to \$1.1145 per share for each share of Series C Preferred then held by them (as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on the Series C Preferred (the "Series C Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Series C Preferred the full Series C Preference, the holders of the Series C Preferred shall share ratably in any distribution of assets according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(b) The Series BB-2 Preferred. Subject to the rights of the Series C Preferred as set forth in clause (a) above, in the event of any Liquidation of this Corporation, either voluntary or involuntary, the holders of Series BB-2 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series BB-1 Preferred, Series AA-5 Preferred, Series AA-4 Preferred, Series AA-3 Preferred, Series AA-2 Preferred, Series AA-1 Preferred and the Common Stock, an amount equal to \$1.141 per share for each share of Series BB-2 Preferred then held by them (as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on the Series BB-2 Preferred (the "Series BB-2 Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Series BB-2 Preferred the full Series BB-2 Preference, the holders of the Series BB-2 Preferred shall share ratably in any distribution of assets, after payment of the Series C Preference, according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(c) The Series BB-2 Preferred and Series BB-1 Preferred. Subject to the rights of the Series C Preferred and Series BB-2 Preferred as set forth in clause (a) and (b), above, in the event of any Liquidation of this Corporation, either voluntary or involuntary, the holders of Series BB-2 Preferred and the Series BB-1 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series AA-5 Preferred, Series AA-4 Preferred, Series AA-3 Preferred, Series AA-2 Preferred, Series AA-1

Preferred and the Common Stock, an amount equal to \$0.571 per share for each share of Series BB-2 Preferred then held by them and \$1.839 per share for each share of Series BB-1 Preferred then held by them (as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on the Series BB-1 Preferred (the "Series BB Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Series BB-2 Preferred and Series BB-1 Preferred the full Series BB Preference, the holders of the Series BB-2 Preferred and Series BB-1 Preferred shall share ratably in any distribution of assets, after payment of the Series C Preference and the Series BB-2 Preference, according to the respective amounts which would be payable pursuant to this clause (b) in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(d) The Series AA-5 Preferred. Subject to the rights of the Series C, the Series BB-2 Preferred and Series BB-1 Preferred as set forth in clauses (a), (b) and (c) above, in the event of any Liquidation of this Corporation, either voluntary or involuntary, the holders of Series AA-5 Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series AA-4 Preferred, Series AA-3 Preferred, Series AA-2 Preferred, Series AA-1 Preferred and the Common Stock, an amount equal to \$1.839 per share for each share of Series AA-5 Preferred then held by them (as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on the Series AA-5 Preferred (the "Series AA-5 Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Series AA-5 Preferred the full Series AA-5 Preference, the holders of the Series AA-5 Preferred shall share ratably in any remaining distribution of assets, after payment of the Series C Preference, the Series BB-2 Preference and the Series BB Preference, according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(e) The Junior Preferred. Subject to the rights of the Series C Preferred, the Series BB-2 Preferred, Series BB-1 Preferred and the Series AA-5 Preferred as set forth in clauses (a), (b) (c) and (d) above, in the event of any Liquidation of this Corporation, either voluntary or involuntary, the holders of the Series AA-4 Preferred, the Series AA-3 Preferred and the Series AA-2 Preferred (collectively, the "Junior Preferred") shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series AA-1 Preferred and Common Stock, an amount equal to \$2.391 per share for each share of Series AA-4 Preferred then held by them, \$8.597 per share for each share of Series AA-3 Preferred then held by them and \$5.15 per share for each share of Series AA-2 Preferred then held by them (each as adjusted for any stock dividends, stock splits, recapitalizations, combinations, consolidations, or the like) plus an amount equal to any declared but unpaid dividends on such shares (the "Junior Preferred Preference"). If upon a Liquidation, the assets shall be insufficient to pay the holders of the Junior Preferred the full Junior Preferred Preference, the holders of the Junior Preferred shall share ratably in any remaining distribution of assets, after payment of the Series C Preference, the Series BB-2 Preference, the Series BB Preference and the Series AA-5 Preference, according to the respective amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full.

(f) Preferred Stock and Common Stock. Upon the completion of the distributions required by Sections 2(a), (b), (c) (d), and (e) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Preferred Stock and the holders of the Common Stock, pro rata based on the number of shares of Common Stock (on an as converted basis) held by each.

(g) "Liquidation" shall mean (A) a liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary; (B) a sale, lease, license or other transfer of all or substantially all of this Corporation's assets or the exclusive license or lease of substantially all of its intellectual property; (C) a sale, transfer or exchange of 50% or more of this Corporation's outstanding stock in one transaction or a series of related transactions, which, if issued at the same time, would constitute a transfer of 50% or more of the outstanding voting power of this Corporation or (D) a consolidation, merger or reorganization of this Corporation with or into any other entity if this Corporation's shareholders do not control a majority of the outstanding voting securities of such consolidated, merged or reorganized entity; provided, however, that any event described in (A), (B), (C) or (D) above shall not be deemed to be a Liquidation under this Section 2 in the event that the holders of at least two-thirds of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, and holders of at least two-thirds of the Series C Preferred, voting as a separate class, and a majority of the directors of the Board of Directors determine that such action should not be deemed a Liquidation.

(h) Any securities to be delivered to the holders of Preferred Stock pursuant to Section 2(a), (b), (c), (d), (e) or (f) above shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 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 are applicable) over the 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 by the Corporation.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subsections 2(h)(i)(1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of a majority of the voting power of the then outstanding shares of each relevant series of Preferred Stock entitled to receive such securities, each such series voting as a separate class.



(i) In the event the requirements of Section 2 are not complied with, the Corporation shall forthwith either:

(i) cause the closing of the applicable transaction to be postponed until such time as the requirements of this Section 2 have been complied with, or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 3(i) hereof.

(j) As authorized by Section 402.5(c) of the California Corporations Code, any distribution made as described in paragraphs (1) and (2) of Section 500(a) of the California Corporations Code with respect to repurchase by the Corporation of shares of Common Stock issued to or held by employees or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase may be made without regard to preferential dividends arrears amounts and/or preferential rights amounts.

### 3. Conversion.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock. Each share of Preferred Stock shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Conversion Price (as defined with respect to each series of the Preferred Stock in this Section 3(a) and as may be adjusted pursuant to the operation of Section 3(d)(ii)) per share then in effect for that series of Preferred Stock into the per share Conversion Value (as hereinafter defined with respect to each series of Preferred Stock).

The Conversion Price per share of Series C Preferred shall be initially \$1.1145, and the per share Conversion Value of Series C Preferred shall be \$1.1145. The Conversion Price per share of Series BB-2 Preferred shall be initially \$1.1145, and the per share Conversion Value of Series BB-2 Preferred shall be \$1.1145. The Conversion Price per share of Series BB-1 Preferred shall be initially \$1.1145, and the per share Conversion Value of Series BB-1 Preferred shall be \$1.1145. The Conversion Price per share of Series AA-5 Preferred shall be initially \$1.1145, and the per share Conversion Value of Series AA-5 Preferred shall be \$1.1145. The Conversion Price per share of Series AA-4 Preferred shall be initially \$1.1145, and the per share Conversion Value of Series AA-4 Preferred shall be \$1.1145. The Conversion Price per share of Series AA-3 Preferred shall be initially \$1.1145, and the per share Conversion Value of Series AA-3 Preferred shall be \$1.1145. The Conversion Price per share of Series AA-2 Preferred shall be initially \$1.1145, and the per share Conversion Value of Series AA-2 Preferred shall be \$1.1145. The Conversion Price per share of Series AA-1 Preferred shall be initially \$1.1145, and the per share Conversion Value of Series AA-1 Preferred shall be \$1.1145. The Conversion Price of each series of Preferred Stock shall

be subject to adjustment from time to time as provided below. The number of shares of Common Stock to which a share of Preferred Stock is convertible is hereinafter referred to as the Conversion Rate of such share.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate for the respective series of Preferred Stock upon the earlier of (A) the date specified by the vote or written consent of the holders of at least two-thirds of the then-outstanding shares of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, and the holders of at least two-thirds of the Series C Preferred, voting as a separate class or (B) the closing of a firm commitment 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 Corporation with an aggregate offering price of not less than \$25,000,000. In the event of the automatic conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of the sale of securities in such public offering.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to the fair value of such fraction. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same. In the event of an automatic conversion pursuant to Section 3(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates with respect to shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted; in the case of automatic conversion pursuant to subsection 3(b)(A), on the date requisite consent or agreement of the minimum required percentage of holders shall have been obtained; or, in the case of automatic conversion pursuant to subsection 3(b)(B), immediately prior to the closing of the public offering. The person or persons entitled to receive the shares of Common Stock issuable upon such

conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Adjustments for Diluting Issues.

(i) Special Definitions. For purposes of this Section 3(d), the following definitions shall apply:

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

(2) 'Original Issue Date' shall mean the date of initial issuance of a share of the Series C Preferred.

(3) 'Convertible Securities' shall mean any evidence of indebtedness, shares or other securities (other than Common Stock) convertible into or exchangeable for Common Stock.

(4) 'Additional Shares of Common Stock' shall mean all shares of Common Stock and Convertible Securities issued by the Corporation after the Original Issue Date, other than:

(A) shares of Common Stock issued (i) upon conversion of the shares of Preferred Stock authorized herein, including shares of Common Stock deemed to be issued upon the original issuance of the Preferred Stock, or (ii) upon conversion of Convertible Securities, provided that such Convertible Securities (other than the Preferred Stock) shall be deemed to be Additional Shares of Common Stock;

(B) shares of Common Stock and Options to purchase shares of Common Stock (appropriately adjusted for stock splits, recapitalizations and the like) issuable or issued (and not repurchased at cost by the Corporation in connection with the termination of employment) to employees, officers, directors, consultants, contractors or advisors of the Corporation pursuant to a stock option plan adopted by the Corporation and approved by its shareholders; provided, however, that the number of shares of Common Stock and Options to purchase shares of Common Stock does not exceed 4,869,071 shares in the aggregate (including shares of Common Stock issued upon exercise of outstanding options), as such number may be increased from time to time with the approval of holders of two-thirds of the then outstanding shares of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis and approval of holders of two-thirds of the then outstanding shares of Series C Preferred, voting as a separate class;

(C) shares of Common Stock and Convertible Securities issued or issuable as a dividend or distribution on Preferred Stock;

(D) shares of Common Stock and Convertible Securities issued in connection with any equipment lease, bank credit arrangements, technology license, vendor or

customer relationship or similar non-equity financing transaction pursuant to approval by a majority of the Board of Directors;

(E) shares of Common Stock and Convertible Securities issued or issuable by way of a transaction described in Sections 3(d)(iv) through 3(d)(vi) below;

(F) shares of Common Stock and Convertible Securities issued or issuable upon the exercise of warrants or other rights issued or issuable by the Corporation on or prior to the Original Issue Date;

(G) shares of Common Stock and Convertible Securities issued or issuable in connection with a business acquisition by the Corporation pursuant to approval by a majority of the Board of Directors;

(H) shares of Common Stock and Convertible Securities issued or issuable by way of dividend or other distribution on shares of Common Stock excluded from the definition of Additional Shares of Common Stock by the foregoing clauses (A), (B), (C), (D), (E), (F), (G) or this clause (H).

(ii) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(1) Adjustment of Series C Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series C Preferred, then in such event, the then current Conversion Price of the Series C Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series C Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series C Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(1), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(2) Adjustment of Series BB-2 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series BB-2 Preferred, then in such event, the then current Conversion Price of the Series BB-2 Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series BB-2 Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation

for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series BB-2 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(2), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(3) Adjustment of Series BB-1 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series BB-1 Preferred, then in such event, the then current Conversion Price of the Series BB-1 Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series BB-1 Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series BB-1 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(3), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(4) Adjustment of Series AA-5 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series AA-5 Preferred, then in such event, the then current Conversion Price of the Series AA-5 Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series AA-5 Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series AA-5 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(4), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(5) Adjustment of Series AA-4 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series AA-4 Preferred, then in such event, the then current Conversion Price of the Series AA-4 Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series AA-4 Preferred by a fraction, the numerator of which

shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series AA-4 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(5), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(6) Adjustment of Series AA-3 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series AA-3 Preferred, then in such event, the then current Conversion Price of the Series AA-3 Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series AA-3 Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series AA-3 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(6), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(7) Adjustment of Series AA-2 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series AA-2 Preferred, then in such event, the then current Conversion Price of the Series AA-2 Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series AA-2 Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series AA-2 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(7), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(8) Adjustment of Series AA-1 Conversion Price. In the event this Corporation shall issue Additional Shares of Common Stock after the Original Issue Date without consideration or for a consideration per share less than the then current Conversion Price of the Series AA-1 Preferred, then in such event, the then current Conversion Price of the Series AA-1

Preferred shall be reduced, concurrently with such issue, to a price determined by multiplying the then current Conversion Price of the Series AA-1 Preferred by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then current Conversion Price of the Series AA-1 Preferred; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this Section 3(d)(ii)(8), all shares of Common Stock issuable upon conversion of outstanding Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(iii) Determination of Consideration. For purposes of this Section 3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation 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; and

(C) in the event Additional Shares of Common Stock are issued in conjunction with other shares or securities or other assets of the Corporation for consideration which 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.

(2) Options and Convertible Securities. In the case of issuance of Options and Convertible Securities, the following provisions shall apply for all purposes of Section 3(d) except for clause (iv):

(A) The aggregate maximum number of shares of Common Stock or Convertible Securities deliverable upon exercise of such Options for Common Stock shall be deemed to have been issued at the time such Options were issued and for a consideration per share equal to the consideration (determined in the manner provided in subparagraph 3(d)(iii)(1)), if any, received by the Corporation upon the issuance of such Option plus the exercise price provided in such Option for the Common Stock or Convertible Securities covered thereby.

(B) The aggregate maximum number of shares of Common Stock deliverable upon conversion or in exchange for such Convertible Securities or upon the exercise of Options for such Convertible Securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such Convertible Securities were issued or such

Options were issued and for a consideration per share equal to the consideration, if any, received by the Corporation for each share or unit of any such Convertible Securities and related Options (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of each share or unit of such Convertible Securities or the exercise of any related Options (the consideration in each case to be determined in the manner provided in subparagraph 3(d)(iii)(1)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such Options or upon conversion of or in exchange for such Convertible Securities, excluding a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such Options or the conversion or exchange of such Convertible Securities.

(D) Upon the expiration of any such Options, the termination of any such Convertible Securities or the expiration of any Options related to such Convertible Securities, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Convertible Securities which remain in effect) actually issued upon the conversion or exchange of such Convertible Securities or upon the exercise of the Options related to such Convertible Securities.

(E) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subparagraphs 3(d)(iii)(2)(A) and (B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subparagraph 3(d)(iii)(2)(C) or (D).

(iv) Adjustments for Subdivisions, Combinations or Stock Dividends of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, or otherwise), at any time after the Original Issue Date into a greater number of shares of Common Stock, or the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, the Conversion Price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such subdivision or stock dividend, be proportionately decreased based on the ratio of (i) the number of shares of Common Stock outstanding immediately after such subdivision or stock dividend to (ii) the number of shares of Common Stock outstanding immediately prior to such subdivision or stock dividend. 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 Conversion Price then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased on the same basis.

(v) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in (i) securities of the Corporation (other



than shares of Common Stock and other than as otherwise adjusted in this Section 3 or as otherwise provided in Section 1), or (ii) evidences of indebtedness issued by the Corporation or other persons, or (iii) assets (excluding cash dividends) or options or rights not constituting Options, then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of such distribution which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 3 with respect to the rights of the holders of the Preferred Stock.

(vi) Adjustments for Recapitalization, Reclassification, Exchange and Substitution. If at any time or from time to time the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, capital reorganization, reclassification or otherwise (other than a subdivision, combination of shares or merger or sale of assets transaction provided for above or in Section 2), the Conversion Rate then in effect for each series of Preferred Stock shall, concurrently with the effectiveness of such recapitalization, reorganization or reclassification, be proportionately adjusted such that the respective series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders thereof would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such series of Preferred Stock immediately before that change. In addition, to the extent applicable in any reorganization, recapitalization, reclassification or other event, 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 reorganization, recapitalization, reclassification or other event.

(e) No Impairment. The Corporation will not, without the appropriate vote of the shareholders under the General Corporation Law and Section 6 of this Article IV, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price or the Conversion Rate of any series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series 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 a series 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 and the Conversion Rate at the time in effect and applicable to such series, 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 such series.

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

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

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

(ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(iii) to effect any reclassification or recapitalization of its capital stock outstanding involving a change in the outstanding capital stock; or

(iv) to undertake a Liquidation;

then, in connection with each such event, the Corporation shall send to the holders of each series of Preferred Stock:

(1) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto and the amount and character of such dividend, distribution or right); and

(2) in the case of the matters referred to in (iii) and (iv) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of each series of Preferred Stock at the address for each such holder as shown on the books of this Corporation.

#### 4. Redemption.

(a) Redemption of Preferred Stock. The Corporation shall not have the right to call or redeem at any time all or any shares of the Preferred Stock. The holders of the Preferred Stock shall have redemption rights as follows (the "Redemption Rights"):

(i) At any time after four years from the first issuance of the Series C Preferred, upon the election of the holders of at least two-thirds of the then outstanding shares of the Preferred Stock and holders of two-thirds of the then outstanding shares of Series C Preferred, each voting as a separate class on an as-converted into Common Stock basis, (the "Redemption Request"), the Corporation shall redeem all issued, outstanding and unconverted shares of Preferred Stock at the applicable Redemption Price (as defined below) as provided herein from any source of funds legally available therefor. Subject to the election of the holders of the Preferred Stock provided above, the Corporation shall redeem all shares of Preferred Stock outstanding as of the date of such election upon payment of the Redemption Price for the shares so redeemed no later than 45 days after the receipt of a Redemption Request (the "Redemption Date"). If the funds of the Corporation legally available for redemption of the Preferred Stock on the Redemption Date are insufficient to redeem the total number of outstanding shares of Preferred Stock on the Redemption Date, those funds which are legally available will be used to redeem the maximum number of shares of the Preferred Stock ratably among the holders of the Preferred Stock in the following order (1) shares of Series C Preferred, (2) shares of Series BB-2 Preferred, (3) shares of Series BB-1 Preferred, (4) shares of Series AA-5 Preferred, shares of Series AA-4 Preferred, Series AA-3 Preferred and Series AA-2 Preferred and (5) Series AA-1 Preferred. If, and only if, no funds or insufficient funds are available to the Corporation at the Redemption Date to meet the Corporation's redemption obligations pursuant to this Section 4(a)(i), then the Corporation's obligations to redeem shares of the Preferred Stock shall continue and at any time thereafter when additional funds of the Corporation are legally available for the redemption of the Preferred Stock, the Corporation, within ten (10) business days of the availability of such funds, shall use such funds to redeem the balance of the shares which the Corporation has become obligated to redeem on the Redemption Date but which it has not redeemed. The shares of the Preferred Stock that have not been redeemed shall continue to be entitled to the dividend, conversion and other rights, preferences, privileges and restrictions applicable to each series of Preferred Stock.

(ii) The redemption price for each share of the Series C Preferred repurchased (the "Series C Redemption Price") shall be equal to \$1.1145 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series C Preferred). The redemption price for each share of the Series BB-2 Preferred repurchased (the "Series BB-2 Redemption Price") shall be equal to \$1.7120 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series BB-2 Preferred). The redemption price for each share of the Series BB-1 Preferred repurchased (the "Series BB-1 Redemption Price") shall be equal to \$1.8390 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series BB-1 Preferred). The redemption price for each share of the Series AA-5 Preferred repurchased (the "Series AA-5 Redemption Price") shall be equal to \$1.8390 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations,

combinations, consolidations, or the like, with respect to the Series AA-5 Preferred). The redemption price for each share of the Series AA-4 Preferred repurchased (the "Series AA-4 Redemption Price") shall be equal to \$2.3910 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series AA-4 Preferred). The redemption price for each share of the Series AA-3 Preferred repurchased (the "Series AA-3 Redemption Price") shall be equal to \$8.5970 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series AA-3 Preferred). The redemption price for each share of the Series AA-2 Preferred repurchased (the "Series AA-2 Redemption Price") shall be equal to \$5.1500 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series AA-2 Preferred). The redemption price for each share of the Series AA-1 Preferred repurchased (the "Series AA-1 Redemption Price") shall be equal to \$1.8390 for each such share to be redeemed (as adjusted for any stock dividends, stocks splits, recapitalizations, combinations, consolidations, or the like, with respect to the Series AA-1 Preferred).

(iii) Within ten (10) business days of the Corporation's receipt of a Redemption Request, the Corporation will mail written notice to each holder of record of shares of each series of Preferred Stock, at the address for such holder as it appears on the stock transfer books of the Corporation, notifying such holder of the redemption, specifying the Redemption Date upon which the Corporation shall satisfy the Redemption Request, the applicable Redemption Price, the place at which payment may be obtained and the date on which such holder's conversion rights as to such shares terminate, and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). On or after the Redemption Date, each holder of shares to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares to be redeemed, 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 order of the person whose name appears on such certificate or certificates as the owner thereof. In the event that less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(iv) 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 the shares thereupon redeemed, as holders of shares of Preferred Stock (except the right to receive the Redemption Price upon surrender of their certificate or certificates), shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this Corporation or be deemed to be outstanding for any purpose whatsoever. The shares not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein.

(v) If there has been a default in the payment of the Redemption Price, then during the period from the Redemption Date through the date on which such shares of Preferred Stock are redeemed, the Redemption Price of such shares not redeemed will bear interest at a per-annum rate equal to the lower of 8% or the highest rate permitted by law.

## 5. Voting Rights.

(a) Vote Other Than for Directors. Holders of each series of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall vote together with the holders of Common Stock and not as a separate class except as otherwise required by law, or provided herein. Except as otherwise required by law or provided herein, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the shareholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number. Holders of Common Stock and Preferred Stock shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation.

(b) Voting for Directors. The Board of Directors shall consist of seven (7) members. At any time as any shares of the Series C Preferred remain outstanding, the holders of the shares of Series C Preferred, voting as a separate class, shall be entitled to elect one (1) director (the "Series C Director"). At any time as any shares of the Series BB-2 Preferred remain outstanding, the holders of the shares of Series BB-2 Preferred, voting as a separate class, shall be entitled to elect one (1) director (the "Series BB-2 Director"). At any time as any shares of Preferred Stock remain outstanding, the holders of the shares of Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, shall be entitled to elect one (1) director (the "Preferred Stock Director"). The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) directors (the "Common Directors"). The holders of the Preferred Stock and Common Stock, with such holders voting together as a single class, shall be entitled to elect two (2) directors (the "Mutual Director"). A vacancy on the Board of Directors occurring because of the death, resignation or removal of the Series C Director shall be filled by the vote or written consent of the holders of the Series C Preferred, voting as a separate class. A vacancy on the Board of Directors occurring because of the death, resignation or removal of the Series BB-2 Director shall be filled by the vote or written consent of the holders of the Series BB-2 Preferred, voting as a separate class. A vacancy on the Board of Directors occurring because of the death, resignation or removal of a Preferred Stock Director shall be filled by the vote or written consent of the holders of the Preferred Stock, voting as a separate class on an as-converted into Common Stock basis. A vacancy on the Board of Directors occurring because of the death, resignation or removal of a Common Director shall be filled by the vote or written consent of the holders of the Common Stock, voting as a separate class. A vacancy on the Board of Directors occurring because of the death, resignation or removal of a Mutual Director shall be filled by the vote or written consent of the holders of the Preferred Stock and Common Stock, with such holders voting together as a single class on an as-converted to Common Stock basis. A Series C Director, a Series BB-2 Director, a Preferred Stock Director, a Common Director, or a Mutual Director may be removed from the Board of Directors with or without cause by the vote or consent of the holders of the outstanding class or series with

voting power entitled to elect him in accordance with this Section 5(b) and the California Corporations Code.

(c) Voting for Directors in the Event of Default under Section 4. In the event that the Corporation is in default of its obligations to redeem the Preferred Stock, the holders of a majority of the Preferred Stock shall be entitled to elect the Common Directors until such time as the Company is no longer in default pursuant to Section 4. Thereafter, the Common Directors will be elected as provided in Section 5(b) above.

#### 6. Covenants.

In addition to any other rights provided by law, at any such time as at least 600,000 shares of Preferred Stock remain outstanding (as adjusted for stock splits, stock dividends or distributions, recapitalizations, and similar events), the Corporation shall not (whether by merger, consolidation or otherwise), without first obtaining the affirmative vote or written consent of the holders of at least two-thirds of the then outstanding shares of Preferred Stock, voting as a separate class on an as-converted into Common Stock basis, and the holders of at least two-thirds of the then outstanding shares of Series C Preferred, voting as a separate class:

(a) amend or waive any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws, as amended, if such action would amend or waive, alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of any series of the Preferred Stock;

(b) authorize or issue shares of any series or class of stock having any preference or priority (including, but not limited to, voting, dividends, redemption, conversion or liquidation) superior to or on a parity with any such preference or priority of the Series AA-1 Preferred, the Series AA-2 Preferred, the Series AA-3 Preferred, the Series AA-4 Preferred, the Series AA-5 Preferred, the Series BB-1 Preferred, the Series BB-2 Preferred or the Series C Preferred, or authorize shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Corporation having any preference or priority (including, but not limited to, voting, dividends, redemption, conversion or liquidation) superior to or on a parity with any such preference or priority of the Series AA-1 Preferred, the Series AA-2 Preferred, the Series AA-3 Preferred, the Series AA-4 Preferred, the Series AA-5 Preferred, the Series BB-1 Preferred, the Series BB-2 Preferred or the Series C Preferred;

(c) purchase, redeem or otherwise acquire (or pay into or set aside for a sinking fund for such purpose), any of the Common Stock or the Preferred Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock at cost from directors, officers, consultants or employees of the Corporation or any subsidiary pursuant to equity incentive agreements approved by the Corporation's Board of Directors under which the Corporation has the option to repurchase such shares upon the termination of employment or services, or pursuant to a contractual right of first refusal, or pursuant to the provisions of the Articles of Incorporation;

(d) effect a recapitalization, reorganization, merger or consolidation of the Corporation (but excluding any merger effected solely for the purpose of reincorporating in another state), or the merger of any other corporation or corporations, partnership or partnerships, limited liability company or companies or any other entity or entities into the Corporation; a sale, license, grant of security interest in or transfer of all or substantially all of the assets of the Corporation or its intellectual property or any similar transaction; a share exchange; or the undertaking by the Corporation of a transaction or series of transactions or an acquisition in which more than 50% of the voting power of the Corporation is disposed of;

(e) increase or decrease the authorized number of shares of Common Stock or Preferred Stock or any series thereof;

(f) authorize or take any action that would result in the payment or declaration of any dividend or distribution on any shares of the Corporation's equity securities;

(g) permit any subsidiary of the Corporation in which the Corporation holds a controlling voting interest to (i) sell or issue any equity security to any party other than the Corporation; or (ii) grant a security interest in all or substantially all its assets or intellectual property; or

(h) authorize or take any action with respect to a Liquidation; or

(i) create any direct or indirect subsidiary.

## 7. Common Stock.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2(f) above.

(c) Redemption. The Common Stock is not redeemable at the option of the holder thereof.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

## ARTICLE V.

1. Limitation of Directors' Liability. The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

2. Indemnification of Corporate Agents. This Company is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to the Corporation and its shareholders.

3. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right of indemnification or limitation of liability of an agent of this Corporation relating to acts or omissions occurring prior to such repeal or modification.

4. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of California is amended after approval by the shareholders of this Article V to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article V by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

5. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 317 of the Corporations Code. Any amendment, repeal or modification of the foregoing provisions of this Article V shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

6. To the extent permitted by applicable law, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, shareholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

## ARTICLE VI.



The Corporation reserves the right to amend, alter or repeal any provision contained in these Amended and Restated Articles of Incorporation (except as described in Article IV, Section 6 above), in the manner now or hereafter prescribed by law, and all rights and powers conferred by these Amended and Restated Articles of Incorporation on shareholders, directors and officers are granted subject to this reservation.

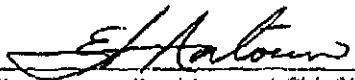
3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors.
4. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of the shareholders entitled to vote in accordance with the Seventh Amended and Restated Articles of Incorporation of this corporation and Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of the corporation is 13,677,450 shares of Common Stock, 90,629 shares of Series A-1<sup>1</sup> Preferred, 8,855,912 shares of Series A-2<sup>1</sup> Preferred, 8,258,696 shares of Series A-3<sup>1</sup> Preferred, 16,311,167 shares of Series A-4<sup>1</sup> Preferred, 29,393,987 shares of Series A-5<sup>1</sup> Preferred, 16,354,494 shares of Series B-1<sup>1</sup> Preferred and 70,113,934 shares of Series B-2 Preferred. There are no outstanding shares of the Series A-1 Preferred, the Series A-2 Preferred, the Series A-3 Preferred, the Series A-4 Preferred, the Series A-5 Preferred or the Series B-1 Preferred. The number of shares of each class of stock voting in favor of the amendment equaled or exceeded the vote required. The percentage of vote required was a majority of the then outstanding shares of capital stock, a majority of the then outstanding shares of Common Stock, two-thirds of the then outstanding shares of Preferred Stock and two-thirds of the then outstanding shares of Series B-2 Preferred Stock.


*[Signature Page to Follow]*

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We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of our own knowledge.

Date: April 24, 2014

  
Elias Antoun, President and Chief Executive  
Officer

  
Pascal Levensohn, Secretary