

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
APPLIED IDENTITY, INC.**

Applied Identity, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware DOES HEREBY CERTIFY:

FIRST: Applied Identity, Inc. was originally incorporated under the name iSite, Inc., and the original Certificate of Incorporation was filed with the Secretary of State of Delaware on March 20, 2002.

SECOND: The Amended and Restated Certificate of Incorporation of Applied Identity, Inc. in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 245 and 242 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.

THIRD: The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Applied Identity, Inc. has caused this Certificate to be signed by the Chief Executive Officer and the Secretary this 8th day of May, 2006.

By /s/ Brian Nugent
Brian Nugent, *Chief Executive Officer*

ATTEST:

By /s/ Greg Patti
Greg Patti, *Secretary*

*State of Delaware
Secretary of State
Division of Corporations
Delivered 07:16 PM 05/08/2006
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EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
APPLIED IDENTITY, INC.

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

SECOND: The address of the registered office of the Corporation in the State of Delaware and the County of New Castle is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of its registered agent at that address is Corporation Service Company.

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

FOURTH:

A. Capital Stock. This Corporation is authorized to issue two classes of shares to be designated respectively preferred stock ("*Preferred Stock*") and common stock ("*Common Stock*"). The total number of shares of capital stock that the Corporation is authorized to issue is Thirty-Eight Million Fifty Thousand Five Hundred Thirty-Seven (38,050,537). The total number of shares of Preferred Stock this Corporation shall have authority to issue is Thirteen Million Fifty Thousand Five Hundred Thirty-Seven (13,050,537). The total number of shares of Common Stock this Corporation shall have authority to issue is Twenty-Five Million (25,000,000). The Preferred Stock shall have a par value of \$.0001 per share and the Common Stock shall have a par value of \$.0001 per share. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of all outstanding shares of capital stock of the Corporation, regardless of whether the Corporation has received the affirmative vote of the holders of a majority of the outstanding shares of Common Stock.

B. Preferred Stock. The shares of Preferred Stock shall be divided into series. The first series shall consist of Seven Hundred Fifty Thousand Five Hundred Thirty Seven (750,537) shares and be designated "*Series A Preferred Stock*." The second series shall consist of [Six Million Three Hundred Thousand (6,300,000) shares] and be designated "*Series B Preferred Stock*." The third series shall consist of Six Million (6,000,000) shares and be designated "*Series C Preferred Stock*."

C. Rights, Preferences and Privileges of Preferred Stock. The powers, preferences, rights, restrictions, and other matters relating to the Preferred Stock are as set forth below.

1. Dividends.

a. The holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive annual dividends at the rate of (i) \$0.12 per share with respect to the Series A Preferred Stock, (ii) \$0.14 per share with respect to the Series B Preferred Stock and (iii) \$0.15 per share with respect to the Series C Preferred Stock (each as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, payable out of funds legally available therefor prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock) on the Common Stock of this Corporation. Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be non-cumulative; *provided* that if a dividend is declared or paid on any series of Preferred Stock, a like amount per share of dividend shall be simultaneously declared and paid on each other series of Preferred Stock.

b. No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid on any Common Stock of the Corporation during any fiscal year of the Corporation until the dividends set forth in Section C.1(a) above shall have been paid or declared and set apart during that fiscal year. After the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock have received their full dividend preferences as set forth above, any additional dividends or distributions declared by the Board of Directors out of funds legally available therefor shall be distributed ratably among all holders of Common Stock and Preferred Stock (on an as-converted to Common Stock basis) as of the record date fixed for determining those entitled to receive such distribution.

c. In the event the Corporation shall declare a distribution on the Common Stock payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

2. Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus of funds of the Corporation to the holders of the Series B Preferred Stock, the Series A Preferred Stock and Common Stock by reason of their ownership thereof, the amount equal to \$2.0926 per share of the Series C Preferred Stock (the "*Original Series C Issue Price*") (as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all declared but unpaid dividends on such share for each share of Series C Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such

holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably on a *pari passu* basis in proportion to the preferential amount each such holder is otherwise entitled to receive under this subsection (a).

b. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and subject to the payment in full of the liquidation preferences provided in subsection (a) of this Section C.2, the holders of the Series A Preferred Stock and the Series B Preferred Stock 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 Common Stock by reason of their ownership thereof, the amount equal to (i) \$1.77 per share of Series A Preferred Stock (the "**Original Series A Issue Price**") and (ii) \$2.02 per share of Series B Preferred Stock (the "**Original Series B Issue Price**") (each as adjusted for any stock dividends, combinations or splits with respect to such shares) plus all declared but unpaid dividends on such share for each share of Series A Preferred Stock or Series B Preferred Stock then held by them. If upon the occurrence of such event, after payment in full of the amount set forth in subsection (a) of this Section C.2 to the holders of Series C Preferred Stock, the assets and funds thus distributed among the holders of the Series A Preferred Stock and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock on a *pari passu* basis in proportion to the preferential amount each such holder is otherwise entitled to receive under this Section (b).

c. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, and subject to the payment in full of the liquidation preferences provided in subparagraphs (a) and (b) of this Section C.2, the holders of the Common Stock, Series C Preferred Stock and Series B Preferred Stock shall be entitled to receive the remaining assets and funds legally available therefor distributed ratably among the holders of Common Stock, Series C Preferred Stock and Series B Preferred Stock, on an as-converted to Common Stock basis, until each holder of Series C Preferred Stock and Series B Preferred Stock shall have received three (3) times the Original Series C Issue Price and the Original Series B Issue Price, respectively, pursuant to subparagraphs (a), (b) and (c) of this Section C.2. Thereafter, any remaining assets and funds legally available for distribution to stockholders shall be distributed ratably among the holders of Common Stock.

d. For purposes of this Section C.2, unless otherwise determined by written consent of the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock, voting as a single class on an as-converted basis, (i) any acquisition of the Corporation by means of merger, consolidation or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary and in which the holders of capital stock of the Corporation immediately prior to such merger, consolidation or other reorganization, hold less than a majority of the voting power of the surviving entity (other than a mere reincorporation transaction), (ii) a sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Corporation, (iii) any acquisition by any person (as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended)

(other than by an issuance directly from the Corporation) of beneficial ownership of a majority of the outstanding equity or voting securities of the Corporation, (iv) any redemption or repurchase of shares of capital stock of the Corporation representing a majority of the voting power of the Corporation immediately prior to such redemption or repurchase or (v) any other change of control of fifty percent (50%) or more of the outstanding voting power of the Corporation, shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Preferred Stock to receive at the closing in cash, securities or other property (valued as provided in Section C.2(e) below) the amounts as specified in this Sections C.2(a), C.2(b) and C.2(c) hereof; provided, however, that unless otherwise determined by written consent of the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis, an equity financing in which the Corporation is the surviving corporation shall not be treated as a liquidation, dissolution or winding up of the Corporation.

e. Whenever the distribution provided for in this Section C.2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors (including the affirmative vote of at least two (2) of the directors elected by the holders of the Series B Preferred Stock and the Series C Preferred Stock pursuant to Section C.2(b) hereof (such two (2) directors, the "*Required Directors*")); provided that any securities shall be valued as follows:

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

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

(iii) if there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors (including the affirmative vote of the Required Directors).

f. Notwithstanding anything in this Section C.2 to the contrary, if a holder of Preferred Stock would receive a greater liquidation amount by converting such holder's shares of Preferred Stock into Common Stock than such holder would be entitled to receive pursuant to subparagraphs 2(a), (b) and (c) as a holder of Preferred Stock (as determined after the payment of any earn-outs or other contingent payments and the release of any escrow or holdback proceeds to the stockholders of the Corporation), then such holder shall not receive any amounts under such subsections as a holder of Preferred Stock, but shall be treated, for the purposes of determining such holder's rights under subsections 2(a), (b) and (c) only, as though such holder held, in addition to any shares of Common Stock actually held by such holder, such number of shares of Common Stock that such holder would hold if such holder had converted such holder's shares of Preferred Stock into Common Stock, effective

immediately prior to the applicable liquidation, dissolution or winding up of the Corporation, at the then applicable Conversion Price (as defined below).

3. Redemption. Neither the Series A Preferred Stock, the Series B Preferred Stock nor the Series C Preferred Stock shall be redeemable at the option of the holders thereof.

4. Voting Rights; Directors.

a. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one half being rounded upward). Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held.

b. The maximum authorized number of members of the Corporation's Board of Directors shall be seven (7). The holders of Series C Preferred Stock, voting separately as a class, shall be entitled to elect one (1) member of the Board of Directors. The holders of Series B Preferred Stock, voting separately as a class, shall be entitled to elect two (2) members of the Board of Directors. The holders of the Common Stock, voting separately as a class, shall be entitled to elect two (2) members of the Board of Directors. The remaining members of the Board of Directors shall be elected by the holders of the Preferred Stock and Common Stock, voting together as a single class on an as-converted basis.

c. Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the Delaware General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created

may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

5. 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 such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) in the case of the Series A Preferred Stock, the Original Series A Issue Price by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion, (ii) in the case of the Series B Preferred Stock, the Original Series B Issue Price by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion and (iii) in the case of the Series C Preferred Stock, the Original Series C Issue Price by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The Conversion Price per share for shares of Series A Preferred Stock (the "**Series A Conversion Price**") shall initially be the Original Series A Issue Price (as adjusted for any stock dividends, combinations or splits with respect to such shares). The Conversion Price per share for shares of Series B Preferred Stock (the "**Series B Conversion Price**") shall initially be the Series B Original Issue Price (as adjusted for any stock dividends, combinations or splits with respect to such shares). The Conversion Price per share for shares of Series C Preferred Stock (the "**Series C Conversion Price**," and together with the Series A Conversion Price and Series B Conversion Price, a "**Conversion Price**" or the "**Conversion Prices**") shall initially be the Series C Original Issue Price (as adjusted for any stock dividends, combinations or splits with respect to such shares). Such initial Series A Conversion Price, Series B Conversion Price and Series C Conversion Price shall be adjusted as hereinafter provided.

b. Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective applicable Conversion Price upon the earlier, of (i) the date specified by written consent or agreement of holders of at least sixty percent (60%) of the shares of the Preferred Stock then outstanding, voting together as a single class on an as-converted to Common Stock basis, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "**Securities Act**"), resulting in the Common Stock of the Corporation being listed for trading on a national securities exchange or the Nasdaq Global Market, other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Corporation (A) at a price per share of not less than \$6.28 (as adjusted pursuant to the terms of such agreement and as adjusted for any stock dividends, combinations or splits with respect to such shares) and (B) the aggregate proceeds to the Corporation (after deduction for underwriters' discounts and expenses relating to the issuance) of at least \$25,000,000 (a "**Qualified IPO**").

c. Mechanics of Conversion.

(i) Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

d. Adjustments to Conversion Price for Certain Dilutive Issues.

(i) Special Definitions. For purposes of this Section C.5(d), the following definitions apply:

(1) “*Options*” shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(2) “*Original Issue Date*” shall mean the first date on which a share of Series C Preferred Stock was issued by the Corporation.

(3) “*Convertible Securities*” shall mean any evidences of indebtedness, shares (other than Options, Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(4) “*Additional Shares of Common Stock*” shall mean all shares of Common Stock issued (or, pursuant to Section C.5(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock issued at the Original Series A Issue Price, the Original Series B Issue Price or the Original Series C Issue Price, as applicable;

(B) to officers, directors, employees, or consultants of, the Corporation or any subsidiary of the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors of the Corporation, including the affirmative vote of the Required Directors (subject to a maximum of 3,340,000 shares (which number includes shares issuable pursuant to options outstanding as of the date hereof) , as adjusted pursuant to the terms of such agreement and as adjusted for any stock dividends, combinations or splits with respect to such shares);

(C) pursuant to a transaction described in Section C.2(d) hereof;

(D) in connection with a bona fide acquisition of another business entity, products or technologies by the Corporation that has been approved by the Board of Directors of the Corporation (including the affirmative vote of the Required Directors);

(E) as a dividend or distribution on the Preferred Stock; or

(F) in a Qualified IPO;

(G) for which adjustment of the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price is made pursuant to Section C.5(e); or

(H) to financial institutions or lessors in connection with commercial credit arrangements or equipment financings approved by the Board of Directors of the Corporation (including the affirmative vote of the Required Directors).

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, other than pursuant to Section C.5(e) hereof, no adjustment in the Conversion Price for a series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section C.5(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price immediately prior to such issue.

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

Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

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

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price, Series B Conversion Price and Series C Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price shall affect Common Stock previously issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock);

(3) upon the expiration of any such Options or rights, the termination of any such rights to convert or exchange or the expiration of any Options or rights related to such Convertible Securities or exchangeable securities, in each case the issuance of which gave rise to an adjustment hereunder, the Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price, to the extent in any way affected by or computed using such Options, rights or Convertible Securities or Options or rights related to such Convertible Securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such Options or rights, upon the conversion or exchange of such Convertible Securities or upon the exercise of the Options or rights related to such Convertible Securities;

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price to an amount which exceeds the lower of (a) the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price, as applicable, on the original adjustment date, or (b) the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price, as applicable, that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation, at any time after the date of filing of this Amended and Restated Certificate of Incorporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.5(d)(iii)) without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, (i) such applicable Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price 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 Conversion Price in effect immediately prior to such issuance, 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. For the purpose of each of the above calculations, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities that are outstanding had been fully exercised (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(v) Determination of Consideration. For purposes of this Section C.5(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 interest or dividends;

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

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration 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 (including the affirmative vote of the Required Directors).

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock

deemed to have been issued pursuant to Section C.5(d)(iii), relating to Options and Convertible Securities shall be determined by dividing

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

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

e. Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that this Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or 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, then the Conversion Price for any series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

f. Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section C.5(e) above or a merger or other reorganization referred to in Section C.2(d) above), the Conversion Price for each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the applicable series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders 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 the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as applicable, immediately before that change.

g. Special Mandatory Conversion.

(i) **Special Definitions.** For purposes of this Section C.5(g), "**Mandatory Offering**" shall mean that portion of any equity financing consummated by the Corporation pursuant to which securities are issued at a purchase price less than the Series C Conversion Price then in effect that the Board (including the Required Directors) determines in good faith must be purchased *pro rata* among the holders of Preferred Stock subject to the following:

(ii) In the event:

(1) this Corporation consummates an equity financing pursuant to which any holders of Preferred Stock are entitled to exercise the right of first offer set forth in that certain Amended and Restated Investors' Rights Agreement, dated on or about the Original Issue Date, by and among this Corporation and certain holders of Preferred Stock, as amended from time to time (such right to be referred to as the "**Right of First Offer**" and such agreement to be referred to as the "**Rights Agreement**"), irrespective of whether the Right of First Offer is waived pursuant to the terms of the Rights Agreement;

(2) the Board of Directors of this Corporation determines (with interested directors able to vote for purposes of this provision and with the affirmative vote of the Required Directors) that it is in the best interests of this Corporation for the holders of Series B Preferred Stock and Series C Preferred Stock of this Corporation to participate in such financing (in which case such financing will be deemed a "**Mandatory Offering**") and determines the aggregate dollar amount to be invested by all holders of Series B Preferred Stock and Series C Preferred Stock (the "**Aggregate Investment Amount**"), which amount may be more or less than the amount such holders have the right to invest in such financing pursuant to the Right of First Offer;

(3) this Corporation delivers a notice ("**Notice**") to the holders of Series B Preferred Stock and Series C Preferred Stock (1) stating this Corporation's bona fide intention to consummate such financing, (2) indicating the number of securities to be offered, (3) indicating the price and terms upon which it proposes to offer such securities, (4) identifying the Pro Rata Share (as defined below) of each holder of Series B Preferred Stock and Series C Preferred Stock of the Aggregate Investment Amount, and (5) offering each holder of Series B Preferred Stock and Series C Preferred Stock the right to purchase such holder's Pro Rata Share of the Aggregate Investment Amount within the time periods set forth in the Notice (which shall not be less than ten (10) days); and

(4) a holder of Series B Preferred Stock or Series C Preferred Stock or an affiliate or designee of such holder (a "**Non-Participating Holder**") does not acquire at least its Pro Rata Share of the Aggregate Investment Amount (regardless of the total amount actually raised in such Mandatory Offering) within the time periods set forth in the Notice;

then all shares of Series B Preferred Stock and Series C Preferred Stock held by such Non-Participating Holder shall automatically and without further action on the part of such Non-

Participating Holder be converted, effective upon, subject to and concurrently with the consummation of the Mandatory Offering (the "**Mandatory Offering Date**"), into shares of Common Stock of this Corporation at a Conversion Price equal to the Original Issue Price for such series (as adjusted for stock splits, stock dividends, recapitalizations or the like). For purposes of this subsection 5(g), each holder's Pro Rata Share of the Aggregate Investment Amount shall be an amount determined by multiplying the Aggregate Investment Amount by a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon conversion of all shares of Series B Preferred Stock and Series C Preferred Stock then held by such holder, and the denominator of which shall be the sum of (x) the total number of outstanding shares of Common Stock which were issued upon conversion of shares of Series B Preferred Stock and Series C Preferred Stock plus (y) the total number of shares of Common Stock issuable upon conversion of all shares of Series B Preferred Stock and Series C Preferred Stock then outstanding. For purposes of calculating a holder's Pro Rata Share, the applicable number of shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock and Series C Preferred Stock shall be calculated based on the number of shares of Series B Preferred Stock and Series C Preferred Stock outstanding immediately following the closing of the Mandatory Offering and assuming full participation of all holders of Series B Preferred Stock and Series C Preferred Stock in such Mandatory Offering. Notwithstanding the foregoing, a holder may assign the right to participate in any future Mandatory Offering to one or more of such holder's affiliates, and such holder's Pro Rata Share shall be reduced to the extent any of such affiliates participate in such Mandatory Offering.

(iii) The holder of any shares of Series B Preferred Stock and/or Series C Preferred Stock converted pursuant to this subsection 5(g) shall deliver to this Corporation during regular business hours at the office of any transfer agent of this Corporation for the Preferred Stock, or at such other place as may be designated by this Corporation, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank or to this Corporation. As promptly as practicable thereafter, this Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Common Stock to be issued and such holder shall be deemed to have become a stockholder of record of Common Stock on the Mandatory Offering Date, unless the transfer books of this Corporation are closed on that date, in which event such holder shall be deemed to have become a stockholder of record of Common Stock on the next succeeding date on which the transfer books are open.

(iv) In the event that a holder of shares of Series B Preferred Stock and/or Series C Preferred Stock converts any shares of such Preferred Stock into Common Stock pursuant to subsection 5(a) hereof within ninety (90) days prior to the initial date of closing of a Mandatory Offering, such shares shall be deemed to have been converted pursuant to this subsection 5(g) immediately following such closing and such shares of Series B Preferred Stock and/or Series C Preferred Stock shall be deemed to be outstanding for purposes of calculating such holder's Pro Rata Share of the Aggregate Investment Amount pursuant to Section C.5(g)(4).

(v) Notwithstanding anything herein to the contrary, the terms of Section 5(g) hereof may be waived or amended by the holders of at least sixty percent

(60%) of the outstanding shares of Series B Preferred Stock and Series C Preferred Stock (voting together as a single class on an as-converted basis).

h. No Impairment. The Corporation will not, by amendment of this Amended and Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action (except pursuant to an amendment to this Amended and Restated Certificate of Incorporation approved by the stockholders in accordance with the terms hereof and applicable law), 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 C.5 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.

i. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section C.5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for such series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

j. 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 Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock: (1) at least twenty (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) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and (2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (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).

k. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares

of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

l. Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors, including the affirmative vote of the Required Directors).

m. Notices. Any notice required by the provisions of this Section C.5 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation. Notwithstanding the other provisions of this Amended and Restated Certificate of Incorporation, all notice periods or requirements in this Amended and Restated Certificate of Incorporation may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis.

n. Waiver of Adjustments. Any adjustment to the Conversion Price of any series of Preferred Stock may be waived with respect to all shares in such series upon the written consent of the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock (voting as a single class on an as-converted basis).

6. Restrictions and Limitations.

a. So long as any shares of Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent of the holders of at least sixty percent (60%) of the then outstanding shares of the Preferred Stock, voting together as a single class on an as-converted basis:

(i) alter or change the rights, preferences, privileges or restrictions of any series of Preferred Stock.

(ii) amend, alter, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation;

(iii) effect a redemption, repurchase, reclassification or recapitalization of the capital stock of the Corporation (other than repurchases by the Corporation of unvested Common Stock at the cost thereof in connection with the termination of an employment or consulting relationship between the Corporation and the original holder thereof or exercises of the Corporation's right of first refusal);

(iv) permit or cause any subsidiary of the Corporation to sell or issue, or transfer, any equity securities of a subsidiary of the Corporation or any rights to purchase or receive (upon conversion or otherwise) any securities of any subsidiary of the Corporation, other than transfers, sales or issuances to the Corporation;

(v) increase or decrease the authorized number of shares of Preferred Stock or Common Stock;

(vi) authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) having any rights, preferences or privileges senior to or on a parity with any series of Preferred Stock;

(vii) pay, declare or set aside any dividend, or make any other distribution, directly or indirectly, on the Corporation's capital stock;

(viii) effect any liquidation, dissolution or winding up of the Corporation (including, without limitation, any transaction described in Section C(2)(d) hereof);

(ix) increase or decrease the authorized size of the Board of Directors;

(x) enter into or amend, agree to enter into or amend, or execute any transaction with any officer, director or affiliate of the Corporation (as such term is defined in the regulations promulgated under the Securities Act), unless approved by the Board of Directors (including the affirmative vote of the Required Directors); or

(xi) mortgage, pledge or create a security interest in, or cause or permit any subsidiary to mortgage, pledge or create a security interest in, any assets of the Corporation or a subsidiary of the Corporation other than in connection with equipment leases secured only by the leased equipment.

7. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

D. The Common Stock.

1. Dividend Rights. Subject to the prior rights of the 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 and as declared by the Board of Directors, out of any assets or the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors. Such dividends shall be non-cumulative.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section C.2 of this Article FOURTH.

3. 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 herein or by law. The rights of the holders of Common Stock with respect to the election of directors shall be as set forth in Section C.4 of this Article FOURTH.

FIFTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize Corporation 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 Delaware General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article FIFTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

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

SEVENTH: Except as otherwise provided in this Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

EIGHTH: To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation

to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others. Any amendment, repeal or modification of the foregoing provisions of this Article EIGHTH shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

NINTH: To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others. Any amendment, repeal or modification of the foregoing provisions of this Article NINTH shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

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