

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF AXIOMED SPINE CORPORATION**

(Pursuant to Section 242 and 245 of the Delaware General Corporation Law)

Axiomed Spine Corporation (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

A. The Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 26, 2004. The Certificate of Incorporation was amended to change the name of the Corporation from Axiomed Merger Corporation to Axiomed Spine Corporation in accordance with the Certificate of Ownership and Merger dated April 27, 2004. Amended and Restated Certificates of Incorporation were filed with the Secretary of State of the State of Delaware on February 9, 2005, June 30, 2008 and November 2, 2009. This Amended and Restated Certificate of Incorporation and all amendments to the Certificate of Incorporation reflected herein have been duly authorized and adopted by the Corporation's Board of Directors and stockholders in accordance with the provisions of Sections 242 and 245 of the Delaware General Corporation Law.

B. The text of the November 2, 2009 Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is **Axiomed Spine Corporation**.

SECOND: The place in the State of Delaware where the Corporation's registered office is located is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be formed under the General Corporation Laws of the State of Delaware (Title 8, §101, *et seq.*) (the "Delaware General Corporation Law").

FOURTH: The maximum number of shares of capital stock which the Corporation is authorized to have outstanding is 159,429,558 shares, 90,594,874 shares of which shall be Common Stock, par value \$0.001 per share (the "Common Stock"), consisting of 90,490,708 shares of Class A Common Stock (the "Class A Common Stock") and 104,166 shares of Class B Common Stock (the "Class B Common Stock"), and 68,834,684 shares of which shall be Preferred Stock, par value \$0.001 per share, 6,550,000 of which shall be designated Series A Preferred Stock (the "Series A Preferred Stock"), 21,538,462 of which shall be designated Series B Preferred Stock (the "Series B Preferred Stock"), 9,451,495 of which shall be designated Series C Preferred Stock (the "Series C Preferred Stock"), and 31,294,727 of which shall be designated Series D Preferred Stock (the "Series D Preferred Stock") and, together with the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock, the "Preferred Stock"). The Class A Common Stock and the Class B Common Stock shall be identical in all respects, except that only the Class A Common Stock shall have voting rights.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock and the Preferred Stock (and the classes and series thereof) are as follows:

1. Dividends. Holders of Preferred Stock shall be entitled to receive dividends when, as and if declared by the Board of Directors. The Corporation shall not declare, pay or set aside any

dividends on shares of any class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless:

(a) the holders of the Series D Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series D Preferred Stock in an amount at least equal to the product of (i) the dividend payable on each share of such class or series determined, if applicable, as if all such shares of such class or series had been converted into Common Stock and (ii) the number of shares of Common Stock issuable upon conversion of a share of Series D Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend;

(b) provided that the holders of Series D Preferred Stock have been paid pursuant to Section 1(a), the holders of the Series C Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series C Preferred Stock in an amount at least equal to the product of (i) the dividend payable on each share of such class or series determined, if applicable, as if all such shares of such class or series had been converted into Common Stock and (ii) the number of shares of Common Stock issuable upon conversion of a share of Series C Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend;

(c) provided that the holders of Series D and Series C Preferred Stock have been paid pursuant to Sections 1(a) and 1(b), the holders of the Series B Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series B Preferred Stock in an amount at least equal to the product of (i) the dividend payable on each share of such class or series determined, if applicable, as if all such shares of such class or series had been converted into Common Stock and (ii) the number of shares of Common Stock issuable upon conversion of a share of Series B Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend; and

(d) provided that the holders of Series D, Series C and Series B Preferred Stock have been paid pursuant to Sections 1(a), 1(b) and 1(c), the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the product of (i) the dividend payable on each share of such class or series determined, if applicable, as if all such shares of such class or series had been converted into Common Stock and (ii) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend.

2. Liquidation Rights.

(a) Series D Preferred Stock Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntarily or involuntarily (a "Liquidation"), each holder of Series D Preferred Stock shall be entitled to receive, out of any and all assets and funds of the Corporation legally available therefor, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Common Stock or to the holders of Series C, Series B or Series A Preferred Stock by reason of their ownership thereof, the amount of \$1.36 per share of Series D Preferred Stock held by such holder (as appropriately adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations, reclassifications and the like occurring with respect to the Series D Preferred Stock after the date of the filing of this Amended and Restated Certificate (the "Filing Date")) plus an amount equal to all declared but unpaid dividends on such share of Series D Preferred Stock (collectively, the "Series D Liquidation Preference"). If the assets and funds distributed among the holders of the Series D Preferred Stock are insufficient to permit the payment to such holders of their full preferential amount, then any and all assets and funds of the Corporation legally available for distribution

shall be distributed among the holders of Series D Preferred Stock, pro rata, based upon the amounts which would have been payable on the Series D Preferred Stock held by them if the aforesaid preferential amounts were paid in full.

(b) Series C Preferred Stock Preference. In the event of a Liquidation, each holder of Series C Preferred Stock shall be entitled to receive, out of any and all assets and funds of the Corporation legally available therefor, after the payment of the Series D Liquidation Preference to the holders of shares of Series D Preferred Stock, and prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Common Stock or to the holders of Series B or Series A Preferred Stock by reason of their ownership thereof, the amount of \$0.68 per share of Series C Preferred Stock held by such holder (as appropriately adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations, reclassifications and the like occurring with respect to the Series C Preferred Stock after the Filing Date) plus an amount equal to all declared but unpaid dividends on such share of Series C Preferred Stock (collectively, the "Series C Liquidation Preference"). If, after payment in full of the Series D Liquidation Preference, the remaining assets and funds distributed among the holders of the Series C Preferred Stock are insufficient to permit the payment to such holders of their full preferential amount, then all such remaining assets and funds of the Corporation legally available for distribution shall be distributed among the holders of Series C Preferred Stock, pro rata, based upon the amounts which would have been payable on the Series C Preferred Stock held by them if the aforesaid preferential amounts were paid in full.

(c) Series B Preferred Stock Preference. In the event of a Liquidation, each holder of Series B Preferred Stock shall be entitled to receive, out of any and all assets and funds of the Corporation legally available therefor, after the payment of the Series D and Series C Liquidation Preference to the holders of shares of Series D and Series C Preferred Stock, and prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Common Stock or to the holders of Series A Preferred Stock by reason of their ownership thereof, the amount of \$1.30 per share of Series B Preferred Stock held by such holder (as appropriately adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations, reclassifications and the like occurring with respect to the Series B Preferred Stock after the Filing Date) plus an amount equal to all declared but unpaid dividends on such share of Series B Preferred Stock (collectively, the "Series B Liquidation Preference"). If, after payment in full of the Series D and Series C Liquidation Preference, the remaining assets and funds distributed among the holders of the Series B Preferred Stock are insufficient to permit the payment to such holders of their full preferential amount, then all such remaining assets and funds of the Corporation legally available for distribution shall be distributed among the holders of Series B Preferred Stock, pro rata, based upon the amounts which would have been payable on the Series B Preferred Stock held by them if the aforesaid preferential amounts were paid in full.

(d) Series A Preferred Stock Preference. In the event of a Liquidation, each holder of Series A Preferred Stock shall be entitled to receive, out of any and all assets and funds of the Corporation legally available therefore, after the payment of the Series D, Series C and Series B Liquidation Preference to the holders of shares of Series D, Series C and Series B Preferred Stock, and prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Common Stock by reason of their ownership thereof, the amount of \$1.00 per share of Series A Preferred Stock held by such holder (as appropriately adjusted for any stock splits, stock dividends, reverse stock splits, stock combinations, reclassifications and the like occurring with respect to the Series A Preferred Stock after the Filing Date) plus an amount equal to all declared and unpaid dividends on such share of Series A Preferred Stock (collectively, the "Series A Liquidation Preference"). If, after payment in full of the Series D, Series C and Series B Liquidation Preference, the remaining assets and funds distributed among the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of their full preferential amount, then all such remaining assets and funds of the

Corporation legally available for distribution shall be distributed among the holders of Series A Preferred Stock, pro rata, based upon the amounts which would have been payable on the Series A Preferred Stock held by them if the aforesaid preferential amounts were paid in full.

(c) Distribution of Remaining Assets. In the event of a Liquidation, and after payment of the Series D Liquidation Preference, the Series C Liquidation Preference, the Series B Liquidation Preference and the Series A Liquidation Preference, the remaining assets or funds of the Corporation legally available for distribution shall be distributed to the holders of the Preferred Stock and the holders of the Common Stock, pro rata, based upon the aggregate number of shares of Common Stock held by each of them (assuming for this purpose that all such securities had been converted to Common Stock pursuant to the terms of the Amended and Restated Certificate of Incorporation immediately prior to such Liquidation). The aggregate amount which a holder of Series D Preferred Stock is entitled to receive under Subsection 2(a) and 2(e) is hereinafter referred to as the "Series D Liquidation Amount", the aggregate amount which a holder of Series C Preferred Stock is entitled to receive under Subsection 2(b) and 2(e) is hereinafter referred to as the "Series C Liquidation Amount", the aggregate amount which a holder of Series B Preferred Stock is entitled to receive under Subsection 2(c) and 2(e) is hereinafter referred to as the "Series B Liquidation Amount", and the aggregate amount which a holder of Series A Preferred Stock is entitled to receive under Subsection 2(d) and 2(e) is hereinafter referred to as the "Series A Liquidation Amount."

(f) Deemed Liquidation.

(i) The following events shall be deemed to be a Liquidation of the Corporation for purposes of this Section 2 (a "Deemed Liquidation Event"), unless the holders of 55% of the Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, elect otherwise by written notice given to the Corporation at least 30 days prior to the effective date of any such event:

(A) a merger or consolidation in which

(1) the Corporation is a constituent party or

(2) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock which represent, immediately following such merger or consolidation at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 2(f)(i), all shares of Common Stock issuable upon exercise of options, warrants or other rights to acquire Common Stock outstanding immediately prior to such merger or consolidation or upon conversion of securities convertible into, or exchangeable for Common Stock outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or

exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

(B) the sale, license, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, except where such sale, lease, license, transfer or other disposition is to a wholly owned subsidiary of the Corporation.

(ii) The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event unless the agreement or plan of merger, consolidation or sale of assets provides that the consideration payable to the Corporation or its stockholders, shall be allocated among and paid (after provision for the obligations of the Corporation in the case of a Deemed Liquidation Event described in Subsection 2(f)(i)(A)(2) or (B) above) to the holders of Preferred Stock of the Corporation in accordance with Subsections 2(a) through (e) above so that holders of the Series D Preferred Stock are paid the Series D Liquidation Amount, holders of the Series C Preferred Stock are paid the Series C Liquidation Amount, the holders of the Series B Preferred Stock are paid the Series B Liquidation Amount and the holders of the Series A Preferred Stock are paid the Series A Liquidation Amount.

(iii) If the consideration distributed by the Corporation or received by its stockholders pursuant to this Section 2, or for any other purpose, is other than cash, its value will be deemed its fair market value as collectively agreed, in good faith, by the Board of Directors and the holders of at least 55% of the then outstanding Preferred Stock. Notwithstanding the foregoing, any securities shall be valued as follows:

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

(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 thirty (30) day period ending three (3) days prior to the closing of the Deemed Liquidation Event;

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

(3) If there is no active public market, the value shall be the fair market value thereof, as collectively determined, in good faith, by the Board of Directors, the holders of at least 55% of the then outstanding Preferred Stock (voting together as a single class on an as-converted to Common Stock basis), or, if such determination presents a conflict of interest which cannot otherwise be resolved, as determined by a nationally or regionally recognized independent appraisal firm selected by the Board of Directors and reasonably acceptable to the holders of at least 55% of the then outstanding Preferred Stock (voting together as a single class on an as-converted to Common Stock basis).

(B) The method of valuation of securities that are subject to an investment letter or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in subparts (A)(1), (2) or (3) to reflect the approximate fair market value thereof, as collectively determined, in good faith, by the Board of Directors and the holders of at least 55% of the then outstanding Preferred Stock (voting together as a single class), or, if such determination presents a conflict of interest which cannot otherwise be resolved, as determined by a nationally or regionally recognized independent appraisal firm selected by the Board of Directors and reasonably acceptable to the holders of at least 55% of the then outstanding Preferred Stock (voting together as a single class on an as-converted to Common Stock basis).

(C) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Deemed Liquidation Event may be superseded by any determination of such value set forth in definitive agreements approved by at least a majority of the members of the Board of Directors (including each of the Preferred Directors) that govern such Deemed Liquidation Event.

(iv) Compliance. In the event the requirements of this Section 2(e) are not complied with, the Corporation shall forthwith either:

(A) cause the closing of any Deemed Liquidation Event to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cause any Deemed Liquidation Event to be rescinded and cancelled, 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 such transaction.

(v) Notice. The Corporation shall give each holder of record of Preferred Stock written notice of any impending Deemed Liquidation Event not later than twenty (20) days prior to the stockholders' meeting called to approve such Deemed Liquidation Event, or thirty (30) days prior to the closing of such Deemed Liquidation Event, whichever is earlier, and shall also notify such holders in writing of the final approval of such Deemed Liquidation Event. The first of such notices shall describe the material terms and conditions of the impending Deemed Liquidation Event and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The Deemed Liquidation Event shall in no event take place sooner than thirty (30) days after the Corporation has given the first notice provided for herein or sooner than five (5) business days after the Corporation has given notice of material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of at least 55% of the then outstanding Preferred Stock, voting together as a single class on an as-converted to Common Stock basis.

3. Conversion. The holders of the Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

(a) Conversion Rate. The "Conversion Rate" in effect at any time for the Series A Preferred Stock (the "Series A Conversion Rate") shall be the quotient obtained by dividing \$1.00 per share of Series A Preferred Stock by the applicable Series A Conversion Price in effect at the time of conversion. The Series A Conversion Price shall as of the Filing Date be \$0.9248 per share,

subject to adjustment as provided below (the "Series A Conversion Price"). The Conversion Rate in effect at any time for the Series B Preferred Stock (the "Series B Conversion Rate") shall be the quotient obtained by dividing \$1.30 per share of Series B Preferred Stock by the applicable Series B Conversion Price in effect at the time of conversion. The Series B Conversion Price shall as of the Filing Date be \$1.1543 per share, subject to adjustment as provided below (the "Series B Conversion Price"). The Conversion Rate in effect at any time for the Series C Preferred Stock (the "Series C Conversion Rate") shall be the quotient obtained by dividing \$0.68 per share of Series C Preferred Stock by the applicable Series C Conversion Price in effect at the time of conversion. The Series C Conversion Price shall as of the Filing Date be \$0.68 per share, subject to adjustment as provided below (the "Series C Conversion Price"). The Conversion Rate in effect at any time for the Series D Preferred Stock (the "Series D Conversion Rate") shall be the quotient obtained by dividing \$0.68 per share of Series D Preferred Stock by the applicable Series D Conversion Price in effect at the time of conversion. The Series D Conversion Price shall initially be \$0.68 per share, subject to adjustment as provided below (the "Series D Conversion Price").

(b) Optional Conversion. Each share of Preferred Stock shall be convertible at any time, at the option of the holder thereof, into such shares of fully paid and nonassessable Class A Common Stock at the then applicable Conversion Rate for such series of Preferred Stock.

(c) Automatic Conversion. Each share of Preferred Stock shall be converted automatically into shares of Class A Common Stock at the then effective Conversion Rate for such series of Preferred Stock (i) upon the election, by vote or written consent, of the holders of at least sixty percent (60%) of the outstanding Preferred Stock (on an as-converted to Common Stock basis); or (ii) immediately prior to 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 to the public for the account of the Corporation so long as (A) the price to the public per share is at least \$3.00 (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares) and (B) the net proceeds to the Corporation (after payment of underwriting commissions and discounts, and offering expenses) is at least \$35,000,000 (such an offering that meets the requirements of this subsection (ii) being referred to as a "Qualified Public Offering").

(d) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into Class A Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock (or, if the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed, such holder shall execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates in lieu of providing such certificates), and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 3(c) above, the outstanding Preferred Stock shall be converted automatically without any further action by the holders of such stock effective upon consummation of the events set forth in Section 3(c)(i), or at the time described in Section 3(c)(ii), as the case may be, and whether or not the certificates representing such shares of stock are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the Class A Common Stock issuable upon such automatic conversion unless the certificates evidencing such 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 to such holder of Preferred Stock a certificate or certificates for the number of shares of Class A Common Stock to which the holder shall be entitled and a check payable to the holder in the amount of any cash payable as the result of a conversion into any fraction of a share of Class A Common Stock. An optional conversion pursuant to Section 3(b) shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate(s) representing the Preferred Stock to be converted (or the lost certificate indemnity agreement), and the person or persons entitled to receive the Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Class A Common Stock on such date.

(e) Fractional Shares of Stock. In lieu of any fractional share of Class A Common Stock to which the holder of Preferred Stock would otherwise be entitled upon conversion, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Class A Common Stock as determined in good faith by the Board of Directors. Whether or not a fractional share of stock is issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock held by each holder at the time of conversion into Class A Common Stock and the number of shares of Class A Common Stock issuable upon such aggregate conversion.

(f) Adjustment to Conversion Price. The Conversion Price for each series of Preferred Stock shall be subject to adjustment from time to time as follows: provided that, except in connection with adjustments pursuant to Section 3(f)(ii)(C)(3), Section 3(f)(ii)(C)(4) and Section 3(f)(v) (which shall be subject to the limits set forth therein), any such adjustment shall not have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount which exceeds the Conversion Price of such series of Preferred Stock, as applicable, existing immediately prior to such adjustment:

(i) Issuances for Consideration Less than Conversion Price.

(A) If at any time after the Filing Date, the Corporation shall issue (or, pursuant to Section 3(f)(ii)(C) hereof, shall be deemed to have issued) any Common Stock other than Excluded Stock (as defined in Section 3(f)(iii) below) for a consideration per share of stock less than the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price, as the case may be, in effect immediately prior to the issuance or deemed issuance of such Common Stock (excluding stock dividends, subdivisions, split-ups, combinations, dividends or recapitalizations which are covered by Sections 3(f)(iv), (v) and (vi)), the Series A Conversion Price, the Series B Conversion Price, or the Series C Conversion Price, as the case may be, in effect immediately before each such issuance shall upon such issuance (except as set forth in Section 3(f)(i)(C) or as otherwise provided in this Section 3(f)) be adjusted to a price equal to the quotient obtained by dividing:

(1) an amount equal to the sum of (a) the total number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance (assuming conversion of all Preferred Stock into Class A Common Stock at the then effective Conversion Rate for the applicable series) multiplied by the Conversion Price of such series in effect immediately prior to such issuance plus (b) the aggregate consideration received by the Corporation upon such issuance or deemed issuance, by

(2) the total number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance (assuming conversion of all Preferred Stock into Class A Common Stock at the then effective Conversion Rate for the applicable series) plus the number of shares of Common Stock actually issued (or deemed to have been issued) in the transaction which resulted in the adjustment pursuant to this Section 3(f)(i).

(B) If at any time after the Filing Date, the Corporation shall issue (or, pursuant to Section 3(f)(ii)(C) hereof, shall be deemed to have issued) any Common Stock other than Excluded Stock (as defined in Section 3(f)(iii) below) for a consideration less than the Series D Conversion Price in effect immediately prior to the issuance of such Common Stock (excluding stock dividends, subdivisions, stock splits, reverse stock splits, recapitalizations which are covered by Sections 3(f)(iv), (v) and (vi)), the Conversion Price of such Common Stock in effect immediately before each such issuance shall upon such issuance be reduced to the consideration per share received for such issuance; provided that if such issuance or deemed issuance was for no consideration, then the Corporation shall be deemed to have received an aggregate consideration of \$0.001 per share issued or deemed to be issued.

(C) Notwithstanding Section 3(f)(i)(A), except with respect to the Series D Sale (as defined in Section 3A(a)(i) and to which this Section 3(f)(i)(C) shall not apply), in no event shall the Proportionate Adjustment pursuant to this Section 3(f)(i) in the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price resulting from any sale of Common Stock exceed the Proportionate Adjustment in the Series D Conversion Price, and to the extent the Proportionate Adjustment in the Series D Conversion Price is less than the Proportionate Adjustment of any such series derived by applying Section 3(f)(i)(A), the Conversion Price of such series shall instead be adjusted to a price equal to the quotient of the Conversion Price of such series in effect immediately prior to such issuance divided by the Proportionate Adjustment in the Series D Conversion Price. For such purposes, the "Proportionate Adjustment" of any series of Preferred Stock shall be equal to the Conversion Price of such series in effect immediately before such issuance or deemed issuance divided by Conversion Price in effect immediately after such issuance or deemed issuance as computed in accordance with Section 3(f)(i)(A) or (B).

(ii) For purposes of any adjustment of any Conversion Price pursuant to Section 3(f)(i), the following provisions shall be applicable:

(A) In the case of the issuance (or deemed issuance pursuant to Section 3(f)(ii)(C)) of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any underwriting discounts or commissions paid or incurred by the Corporation in connection with the issuance and sale thereof.

(B) In the case of the issuance (or deemed issuance pursuant to Section 3(f)(ii)(C)) of Common Stock for consideration, in whole or in part, other than cash, the consideration other than cash shall be deemed to be the fair market value thereof, as determined by the Board of Directors, irrespective of generally accepted accounting treatment.

(C) In the case of the issuance of (a) options to purchase or rights to subscribe for Common Stock (other than Excluded Stock), (b) securities by their terms convertible into or exchangeable for Common Stock (other than Excluded Stock) or (c) options to purchase or rights to subscribe for such convertible or exchangeable securities:

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential anti-dilution adjustments) and for a consideration equal to the consideration (determined in the manner provided in clauses (A) and (B) above), if any, received by the

Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities, or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof (assuming the satisfaction of any conditions to conversion or exercisability in each case, including without limitation, the passage of time, but without taking into account potential anti-dilution adjustments), shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights (excluding any cash paid on account of accrued interest or accrued dividends), plus the additional minimum consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in clauses (A) and (B) above);

(3) on any change in the number of shares of Common Stock deliverable upon exercise of any such options or rights or conversion of or exchange for such convertible or exchangeable securities, or on any change in the minimum purchase price of such options, rights or securities, (excluding changes resulting from the antidilution provisions of such options, rights or securities), each applicable Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment made upon (a) the issuance of such options, rights or securities not exercised, converted or exchanged prior to such change or (b) the options or rights related to such securities not converted or exchanged prior to such change, as the case may be, been made upon the basis of such change; and

(4) on 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 or exchangeable securities, each applicable Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment made upon the issuance of such options, rights, convertible or exchangeable securities or options or rights related to such convertible or exchangeable securities, as the case may be, been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such convertible or exchangeable securities or upon the exercise of the options or rights related to such convertible or exchangeable securities, as the case may be.

(D) In the case of any option or convertible security with respect to which the maximum number of shares of Common Stock issuable upon exercise or conversion or exchange thereof is not determinable, no adjustment to any Conversion Price shall be made until such number becomes determinable.

(E) In the event the Corporation shall issue on more than one date additional shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price of any series of Preferred Stock pursuant to the terms of Section 3(f)(i), and such issuance dates occur within a period of no more than 360 days from the first such issuance to the final such issuance then, upon the final such issuance, the Conversion Price of such series shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(iii) As used herein, "Excluded Stock" shall mean:

(A) all Common Stock and other securities convertible into or exercisable or exchangeable for Common Stock issued and outstanding as of the Filing Date;

(B) all Class A Common Stock issued or issuable upon conversion of, or as a dividend or distribution on, the Preferred Stock;

(C) all Common Stock issued or issuable upon a stock split, stock dividend or any subdivision of shares of Common Stock for which adjustment is made pursuant to subsection 3(f)(iv) below;

(D) all Common Stock or other securities, or options, warrants or other rights to purchase Common Stock or other securities, issued or issuable to employees, officers, directors, consultants, or other service providers pursuant to any arrangement, agreement, contract or plan, including any incentive stock plan, properly approved by the Board of Directors prior to the Filing Date and, for any such arrangement, agreement, contract or plan approved after the Filing Date, approved by the Board of Directors, including at least a majority of the Preferred Directors (and all Common Stock or other securities issued upon exercise or conversion thereof);

(E) all Common Stock or other securities issued or issuable in a merger or acquisition that is approved by the Board of Directors, provided that such plan or arrangement is approved by all of the Preferred Directors;

(F) all Common Stock or other securities issued or issuable to suppliers, lessors, lenders or technology providers to the Corporation pursuant to any plan or arrangement approved by the Board of Directors, provided that such plan or arrangement is approved by all of the Preferred Directors;

(G) all Common Stock or other securities, or options, warrants or other rights to purchase Common Stock or other securities, issued or issuable under the Preliminary Section of that certain Second Amended and Restated License Agreement between the Corporation, The Polymer Technology Group, Inc., and PTG Medical LLC dated as of April 23, 2007; and

(H) all Series D Preferred Stock issued in exchange for Series C or Series B Preferred Stock pursuant to Section 1.2(d) of that certain Share Purchase Agreement, dated July 16, 2010, among the Corporation and the investors party thereto (the "Purchase Agreement").

(iv) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the outstanding Common Stock without a comparable subdivision of any series of Preferred Stock, or combine the outstanding shares of any series of Preferred Stock without a comparable combination of the Common Stock, the Conversion Price of the applicable series of Preferred Stock in effect immediately before that subdivision or combination shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Filing Date combine the outstanding shares of Common Stock without a comparable combination of any series of Preferred Stock, or effect a subdivision of the outstanding shares of any series of Preferred Stock without a comparable subdivision of the Common Stock, the Conversion Price of the applicable series of Preferred Stock in effect immediately before the combination or subdivision shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of

shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(v) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price of each series of Preferred Stock in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(A) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(B) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution: provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price of each such series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock of the applicable series had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(vi) Reorganization; Reclassification; Merger; Consolidation. Subject to the provisions of Section 2(c), in the event, at any time after the Filing Date, of any capital reorganization, any reclassification of the capital stock of the Corporation (other than as a result of a stock dividend, subdivision, split-up or combination to which Section 3(f)(iv) or Section 3(f)(v) applies), or a consolidation or merger of the Corporation with or into another person, each series of Preferred Stock, as applicable, shall, after such reorganization, reclassification, consolidation or merger, be convertible into the kind and number of shares of capital stock or other securities or property of the Corporation or otherwise to which the holders of such Preferred Stock would have been entitled if immediately prior to such reorganization, reclassification, consolidation or merger such holder had converted his or its Preferred Stock into Common Stock; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 3 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 3 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock. The provisions of this clause (vi) shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(g) Miscellaneous.

(i) Rounding. All calculations under Section 3(f) shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share of stock, as the case may be.

(ii) Minimal Adjustments. No adjustment in the Conversion Price of any series of Preferred Stock need be made if such adjustment would result in a change in such Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 that is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment that, on a cumulative basis, amounts to an adjustment of \$0.01 or more in the such Conversion Price.

(iii) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price 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 prepare and furnish to each holder of affected Preferred Stock a certificate setting forth such adjustment or readjustment and showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon 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 (A) all such adjustments and readjustments, (B) the Conversion Price in effect at such time for each series of Preferred Stock, and (C) the number of shares of Class A Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's Preferred Stock.

(iv) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property or receive any other right, the Corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to such record date a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(v) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of effecting the conversion of the Preferred Stock, such number of shares of its Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of shares of authorized but unissued Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding 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 Class A Common Stock to such number of shares of stock as shall be sufficient for such purpose. All Class A Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the Corporation will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the lowest Conversion Price in effect at that time. The Corporation will take all such actions as may be necessary to assure that all such Class A Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Class A Common Stock may be listed. The Corporation will not take any action which results in any adjustment of any Conversion Price if the total number of shares of Class A Common Stock issued or issuable after such action upon conversion of the Preferred Stock would exceed the total number of shares of Class A Common Stock then authorized by this Amended and Restated Certificate of Incorporation.

(vi) Notices. Any notice required by the provisions of this Section 3 to be given to any holder of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the Corporation's books.

(vii) Reissuance of Converted Stock. No shares of Preferred Stock that have been converted into Class A Common Stock after the original issuance thereof shall ever again be reissued and all such shares of stock so converted shall, upon such conversion, cease to be a part of the authorized shares of stock of the Corporation.

(viii) Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the vote or written consent of the holders of at least fifty-five percent (55%) of the outstanding Preferred Stock, voting together as a single class (on an as-converted to Common Stock basis); provided, however, that no waiver of any such downward adjustment shall be made with respect to any series of Preferred Stock unless there is also an equivalent waiver of downward adjustment of the Conversion Price of all series of Preferred Stock. Any such waivers shall bind all future holders of the applicable series of Preferred Stock, as the case may be, with respect to such adjustment or adjustments and shall be effective only with respect to the adjustment or adjustments specified in the resolution or written consent of the holders of Preferred Stock.

(ix) Termination of Conversion Rights. In the event of a redemption of any share of Preferred Stock pursuant to Section 5 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the applicable Redemption Date, unless the redemption price is not paid on such Redemption Date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for payment of any such amounts distributable on such event to the holders of the Preferred Stock.

3A. Special Mandatory Conversion. The holders of the Preferred Stock shall be subject to the following mandatory conversion provisions:

(a) Trigger Event.

(i) In the event that any holder of shares of Preferred Stock does not participate in the sale of shares of Series D Preferred Stock pursuant to the Purchase Agreement (the "Series D Sale") by purchasing at the Initial Closing at least four ninths (4/9) of its Pro Rata Amount and committing to purchase on the Milestone Closing a number of shares of Series D Preferred Stock at least equal to one-half (50%) of the shares it purchases at the Initial Closing, then the Applicable Portion (as defined below) of the shares of each series of Preferred Stock (other than Series D Preferred Stock) held by such holder shall automatically, and without any further action on the part of such holder, be converted at the relevant Conversion Rate applicable to the shares to be converted in effect immediately prior to the Initial Closing into shares of Class A Common Stock effective upon, subject to, and concurrently with, the Initial Closing.

(ii) In the event that any holder of shares of Preferred Stock participates in the Series D Sale by purchasing at the Initial Closing at least four ninths (4/9) of its Pro Rata Amount, but does not purchase at the Second Closing a number of shares of Series D Preferred Stock so that it has purchased, as of the completion of the Second Closing, at least two thirds (2/3) of its Pro Rata Amount,

then the Applicable Portion of the shares of Preferred Stock (other than Series D Preferred Stock) held by such holder shall automatically, and without any further action on the part of such holder, be converted at the relevant Conversion Rate applicable to the shares to be converted in effect immediately prior to the Initial Closing into shares of Class A Common Stock effective upon and concurrently with the Second Closing or in the event that the Second Closing does not occur within thirty (30) days after the Initial Closing, at the close of business on such thirtieth day.

(iii) In the event that any holder of shares of Preferred Stock participates in the Series D Sale but does not purchase on or before the Milestone Closing an aggregate number of shares of Series D Preferred Stock equal to its Pro Rata Amount, then the Applicable Portion shall be recalculated upon completion of the Milestone Closing, and to the extent the Applicable Portion upon completion of the Milestone Closing is larger than the Applicable Portion calculated pursuant to clauses (i) and (ii) above, then the Applicable Portion (calculated as of completion of the Milestone Closing) of all shares of each series of Preferred Stock (other than Series D Preferred Stock) held by such holder, less any shares converted pursuant to subsection (i) and subsection (ii) above, shall automatically, and without any further action on the part of such holder, be converted at the relevant Conversion Rate applicable to the shares to be converted in effect immediately prior to the Initial Closing into shares of Class A Common Stock concurrently with Milestone Closing.

(iv) In the event that any holder of shares of Preferred Stock participates in the Series D Sale, but does not purchase at the Milestone Closing a number of shares of Series D Preferred Stock equal to 50% or more of the number of shares of Series D Preferred Stock it has purchased prior to the Milestone Closing, then all Shares of Series D Preferred Stock held by such holder shall automatically, and without any further action on the part of such holder, be converted at the relevant Conversion Rate applicable to the Series D Preferred Shares in effect immediately prior to the Milestone Closing into shares of Class A Common Stock concurrently with Milestone Closing; provided, however, that if any such holder has purchased, on or before the Milestone Closing, at least such holder's Pro Rata Amount, then only the Exchange Shares acquired in the Series B Exchange shall be automatically converted into Class A Common Stock pursuant to this Section 3A(a)(iv).

(v) For purposes of this subsection (a), the following definitions shall apply:

(A) "Applicable Portion" shall mean, with respect to any holder of shares of Preferred Stock, (x) as of the Initial Closing or the Second Closing, a number of shares of each series of Preferred Stock calculated by multiplying the aggregate number of shares of such series of Preferred Stock held by such holder immediately prior to such Closing by a fraction, the numerator of which is equal to the amount, if positive, by which two thirds (2/3) of such holder's Pro Rata Amount exceeds the number of shares of Series D Preferred Stock actually purchased by such holder at or prior to such time, and the denominator of which is equal to two thirds (2/3) of such holder's Pro Rata Amount, and (y) as of the Milestone Closing, a number of shares of each series of Preferred Stock calculated by multiplying the aggregate number of shares of such series of Preferred Stock held by such holder immediately prior to the Initial Closing by a fraction, the numerator of which is equal to the amount, if positive, by which such holder's Pro Rata Amount exceeds the number of shares of Series D Preferred Stock actually purchased by such holder at or prior to such Milestone Closing, and the denominator of which is equal to such holder's Pro Rata Amount.

(B) "Exchange Shares" shall have the meaning set forth in the Purchase Agreement.

(C) "Initial Closing" shall have the meaning set forth in the Purchase Agreement.

(D) "Milestone Closing" shall have the meaning set forth in the Purchase Agreement.

(E) "Offered Securities" shall mean the 15,000,000 shares of Series D Preferred Stock to be sold pursuant to the Purchase Agreement.

(F) "Pro Rata Amount" shall mean, with respect to any holder of Preferred Stock, a number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of Common Stock into which all shares of Preferred Stock owned by such holder are convertible as of immediately prior to the Initial Closing (based on the applicable Conversion Rate for each series of Preferred Stock held by such holder), and the denominator of which is equal to the number of shares of Common Stock into which all shares Preferred Stock owned by all holders of Preferred Stock are convertible as of immediately prior to the Initial Closing (based on the applicable Conversion Rate for each Series of Preferred Stock held by such holders).

(G) "Second Closing" shall have the meaning set forth in the Purchase Agreement.

(H) "Series B Exchange" shall have the meaning set forth in the Purchase Agreement.

(b) Affiliates. Notwithstanding anything to the contrary in subsections (a) above, for purposes of determining the number of Offered Securities that a holder of Preferred Stock has purchased in the Series D Sale, the Offered Securities purchased by Affiliates (as defined below) of such holder may, at the election of such holder, be aggregated with the Offered Securities purchased by such holder, provided that all shares of Preferred Stock held by such Affiliates are also aggregated with such holder's shares for purposes of determining the number of shares of Preferred Stock owned by the holder in calculating such holder's Pro Rata Amount and Applicable Portion (and provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). "Affiliate" shall mean, with respect to any holder of shares of Preferred Stock, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, member or employee of such holder and any venture capital fund now or hereafter existing of which the holder is a partner or member which is controlled by or under common control with one or more general partners of such holder or shares the same management company with such holder.

(c) Procedural Requirements. A conversion pursuant to this Section 3A is referred to as a "Special Mandatory Conversion." Upon a Special Mandatory Conversion, each holder of shares of Preferred Stock converted pursuant to Subsection 3A(a) shall be sent written notice of such Special Mandatory Conversion and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 3A. Upon receipt of such notice, each holder of such shares of Preferred Stock shall surrender such holder's certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by such holder's attorney duly authorized in writing. All rights with respect to the Preferred Stock converted

pursuant to Subsection 3A(a), including the rights, if any, to receive notices and vote (other than as a holder of Class A Common Stock), will terminate at the time of the Special Mandatory Conversion (notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor (or lost certificate affidavit and agreement), to receive the items for provided for in the next sentence of this Subsection 3A(c). As soon as practicable after the Special Mandatory Conversion and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock so converted, the Corporation shall issue and deliver to such holder, or to such holder's nominees, a certificate or certificates for the number of full shares of Class A Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 3(e) in lieu of any fraction of a share of Class A Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted and a new certificate or certificates for the number and series of shares, if any, of Preferred Stock represented by such surrendered certificate and not converted pursuant to Subsection 3A(a). Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock (including any series thereof) accordingly.

4. Voting Rights.

(a) General Voting Rights. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Class A Common Stock into which each share of Preferred Stock held by such holder could be converted on the record date for the vote or consent of stockholders (or, if no record date is established, on the date such vote is taken or such consent is solicited) and, except as provided in Section 4(b) and Section 4(c) below or as otherwise required by law, shall have voting rights and powers equal to the voting rights and powers of the Class A Common Stock. Except as otherwise provided herein, or required by law, each holder of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and shall vote as a single class with holders of the Class A Common Stock upon the election of directors and upon any other matter submitted to a vote of stockholders. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all Common Stock into which the Preferred Stock held by each holder could then be converted) shall be rounded to the nearest whole number (with one-half rounded upward to one).

(b) Board of Directors. The members of the Board of Directors of the Corporation shall be determined as follows:

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

(ii) Senior Preferred Directors. The holders of the Series D, Series C and Series B Preferred Stock, voting together as a separate class and series (on an as-converted to Common Stock basis) shall be entitled to elect three (3) members of the Board of Directors (the "Senior Preferred Directors") and, together with the Series A Director, the "Preferred Directors") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(iii) Remaining Directors. The holders of Preferred Stock and Class A Common Stock, voting together as a single class on an as-if-converted basis, shall be entitled to elect the remaining members of the Board of Directors, at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(c) Protective Provisions. The provisions of clause (x) in the next succeeding sentence shall apply at any time that at least 25% of the Series A Preferred Stock issued on the Filing Date is outstanding, the provisions of both clause (x) and clause (y) of the next succeeding sentence shall apply at any time that at least 25% of the Series B Preferred Stock issued on the Filing Date is outstanding, and the provisions of both clause (x) and clause (z) of the next succeeding sentence shall apply at any time any Series D or Series C Preferred Stock is still outstanding. At such times, the Corporation shall not: (x) without the approval of holders of at least 60% of the then outstanding Preferred Stock voting together as a single class on an as-if-converted basis with respect to each matter set forth in this Section 4(c); (y) without the additional approval of holders of at least 65% of the shares of Series B Preferred Stock then outstanding with respect to the matters set forth in items (i), (ii) and (iii) below; and (z) without the additional approval of holders of at least 55% of the shares of Series D Preferred Stock and Series C Preferred Stock (voting together on an as-converted basis) then outstanding with respect to the matters set forth in items (i), (ii) and (iii) below:

(i) alter, amend, repeal or waive any provision of this Amended and Restated Certificate of Incorporation, either directly or through any merger, consolidation, corporate reorganization, corporate restructuring or other like transaction, in a manner adversely affecting the holders of any series of the Preferred Stock, or otherwise alter, amend, repeal or waive, directly or through any such transaction, any of the rights, preferences or privileges of any series of the Preferred Stock;

(ii) authorize, issue or create (by reclassification or otherwise) any new class or series of shares of stock or other equity securities, or any notes or debt securities containing equity features (including, without limitation, debt that is convertible or exchangeable for capital stock, or issued with warrants or capital stock) either directly or through any merger, consolidation, corporate reorganization, corporate restructuring or other like transaction of the Corporation having rights, preferences or privileges senior to or on a parity with any series of the Preferred Stock;

(iii) except in accordance with Section 5 hereof with respect to the Preferred Stock, purchase, redeem or otherwise acquire, either directly or through any merger, consolidation, corporate reorganization, corporate restructuring or other like transaction, any Common Stock, Preferred Stock or other equity securities of the Corporation (other than redemptions and acquisitions made pursuant to agreements approved by the Board of Directors which permit the Corporation to repurchase such equity securities from employees, consultants, and other service providers upon termination of services to the Corporation);

(iv) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing (provided, however, that no such transaction shall be consummated without the class vote of the Series D, Series C and Series B Preferred Stock if it would have an effect specified in Subsections (i), (ii) or (iii) above);

(v) effect any other merger, consolidation, corporate reorganization, corporate restructuring or other like transaction (provided, however, that no such transaction shall be consummated without the class vote of the Series D, Series C and Series B Preferred Stock if it would have an effect specified in Subsections (i), (ii) or (iii) above):

(vi) amend or waive any provision of the Corporation's Amended and Restated Certificate of Incorporation or Bylaws;

(vii) pay or declare any dividend, or make any distribution, on any shares of capital stock, or permit any subsidiary of the Corporation to take any such action, except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock; or

(viii) increase or decrease the authorized number of directors constituting the Board of Directors.

5. Redemption.

(a) Series D Redemption. Shares of Series D Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series D Liquidation Preference per share, at the election of the Corporation either in a single installment, or in three annual installments, commencing 60 days after receipt by the Corporation at any time on or after the fourth anniversary of the Filing Date, from the holders of at least 55% of the then outstanding shares of Series D Preferred Stock, of written notice requesting redemption of all shares of Series D Preferred Stock (the date of such single installment, or if redeemed in multiple installments, each such installment being referred to as a "Series D Redemption Date"). If the Corporation elects to redeem in three installments, on each Series D Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series D Preferred Stock owned by each holder, that number of outstanding shares of Series D Preferred Stock determined by dividing (i) the total number of shares of Series D Preferred Stock outstanding immediately prior to such Series D Redemption Date by (ii) the number of remaining Series D Redemption Dates (including the Series D Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Series D Redemption Date all shares of Series D Preferred Stock to be redeemed on such Series D Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such stock out of funds legally available therefor, based on the amounts which would otherwise be payable in respect of the shares of Series D Preferred Stock to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(b) Series C Redemption. Provided that all shares of Series D Preferred Stock have previously been redeemed or set aside for redemption in accordance with Section 5(a), and that no Series C Redemption Date shall occur prior to the Series D Redemption Date that has retired all of the Series D Preferred Stock theretofore outstanding, shares of Series C Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series C Liquidation Preference per share, in three annual installments commencing 60 days after receipt by the Corporation at any time on or after the fourth anniversary of the Filing Date, from the holders of at least 55% of the then outstanding shares of Series C Preferred Stock, of written notice requesting redemption of all shares of Series C Preferred Stock (the date of each such installment being referred to as a "Series C Redemption Date"). On each Series C Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series C Preferred Stock owned by each holder, that number of outstanding shares of Series C Preferred Stock determined by dividing (i) the total number of shares of Series C Preferred Stock outstanding immediately prior to such Series C Redemption Date by (ii) the number of remaining Series C Redemption Dates (including the Series C Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Series C Redemption Date all shares of Series C Preferred Stock and of any other class or series of stock to be redeemed on such Series C Redemption Date, the Corporation shall redeem a pro rata

portion of each holder's redeemable shares of such stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(c) Series B Redemption. Provided that (i) all shares of Series D Preferred Stock have previously been redeemed or set aside for redemption in accordance with Section 5(a), (ii) no Series B Redemption Date shall occur prior to the Series D Redemption Date that has retired all of the Series D Preferred Stock theretofore outstanding, (iii) the holders of Series C Preferred Stock shall have been provided at least 30 days notice of the intent of the holders of Series B Preferred Stock to require redemption in accordance with this Section 5(c) and shall have had the opportunity to simultaneously request redemption of the Series C Preferred Stock in accordance with Section 5(b), and (iv) in the event the holders of Series C Preferred Stock require redemption in accordance with Section 5(b), no Series B Redemption Date shall occur prior to a Series C Redemption Date that has retired an equal or greater portion of Series C Preferred Stock theretofore outstanding, shares of Series B Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series B Liquidation Preference per share, in three annual installments commencing 60 days after receipt by the Corporation at any time on or after the fourth anniversary of the Filing Date, from the holders of at least 65% of the then outstanding shares of Series B Preferred Stock, of written notice requesting redemption of all shares of Series B Preferred Stock (the date of each such installment being referred to as a "Series B Redemption Date"). On each Series B Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series B Preferred Stock owned by each holder, that number of outstanding shares of Series B Preferred Stock determined by dividing (i) the total number of shares of Series B Preferred Stock outstanding immediately prior to such Series B Redemption Date by (ii) the number of remaining Series B Redemption Dates (including the Series B Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Series B Redemption Date all shares of Series B Preferred Stock and of any other class or series of stock to be redeemed on such Series B Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(d) Series A Redemption. Provided that (i) all shares of Series D Preferred Stock have previously been redeemed or set aside for redemption in accordance with Section 5(a), (ii) no Series B Redemption Date shall occur prior to the Series D Redemption Date that has retired all of the Series D Preferred Stock theretofore outstanding, (iii) the holders of Series C Preferred Stock and Series B Preferred Stock shall have been provided at least 30 days notice of the intent of the holders of Series A Preferred Stock to require redemption in accordance with this Section 5(d) and shall have had the opportunity to simultaneously request redemption of the Series C Preferred Stock in accordance with Section 5(b) and Series B Preferred Stock in accordance with Section 5(c), and (iv) in the event the holders of Series C Preferred Stock require redemption in accordance with Section 5(b), or holders of the Series B Preferred Stock require redemption in accordance with Section 5(c), no Series A Redemption Date shall occur prior to the Series C or Series B Redemption Date, as the case may be, that has retired an equal or greater portion of Series C or Series B Preferred Stock, as applicable, theretofore outstanding, shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series A Liquidation Preference per share, in three annual installments commencing 60 days after receipt by the Corporation at any time on or after the fourth anniversary of the Filing Date, from the holders of at least 65% of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all shares of Series A Preferred Stock (the date of each such installment being referred to as a "Series A Redemption Date"). On each Series A Redemption Date, the

Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series A Preferred Stock owned by each holder, that number of outstanding shares of Series A Preferred Stock determined by dividing (i) the total number of shares of Series A Preferred Stock outstanding immediately prior to such Series A Redemption Date by (ii) the number of remaining Series A Redemption Dates (including the Series A Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Series A Redemption Date all shares of Series A Preferred Stock and of any other class or series of stock to be redeemed on such Series A Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(e) Redemption Notice. Written notice of any redemption of Preferred Stock pursuant to this Section 5 (the "Redemption Notice") shall be mailed, postage prepaid, to each holder of record of the series of Preferred Stock subject to redemption, at such holder's post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

(i) the number of shares of Preferred Stock of each class held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice, as applicable;

(ii) the Redemption Date and the Redemption Price, as applicable;

(iii) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 3(g)(ix)); and

(iv) that the holder is to surrender to the Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares of Preferred Stock to be redeemed.

(f) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of the series of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 3 hereof, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price applicable to such series shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate representing such unredeemed shares of Preferred Stock shall promptly be issued to such holder.

(g) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the applicable Redemption Price payable upon redemption is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such

shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

(h) Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock which are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately canceled and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption.

6. No Impairment. The Corporation will not take any voluntary action (including, without limitation, any amendment of this Amended and Restated Certificate of Incorporation or any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities) in bad faith and with the intent of avoiding or seeking to avoid the observance or performance of any of the terms of the Preferred Stock set forth herein, but will at all times in good faith assist in the carrying out of all such terms. Without limiting the generality of the foregoing, the Corporation (a) will not increase the par value of any shares of stock receivable on the conversion of the Preferred Stock above the amount payable therefor on such conversion and (b) will take all such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and non-assessable shares of stock on the conversion of all Preferred Stock from time to time outstanding. Notwithstanding the foregoing, this provision shall not restrict the Corporation's right to amend its Amended and Restated Certificate of Incorporation with the requisite stockholder consent or take any other action with the requisite stockholder consent.

FIFTH: Preemptive Rights.

1. Subsequent Offerings by Corporation. Subject to the terms herein and to applicable securities laws, each holder of Preferred Stock shall have a right of first refusal to purchase, either directly or through an Affiliate (as defined in Article FOURTH, Section 3A(b)), such holder's Pro Rata Share of all Equity Securities that the Corporation may, from time to time, propose to issue and sell after the Filing Date and prior to the date of a Qualified Public Offering.

2. Exercise of Rights. If the Corporation proposes to issue any Equity Securities prior to a Qualified Public Offering, it shall give each holder of Preferred Stock written notice of its intention, describing the Equity Securities, the price and the terms and conditions upon which the Corporation proposes to issue the same. Each holder of Preferred Stock shall have fifteen (15) calendar days from the giving of such notice to agree to purchase, directly or through an Affiliate, such holder's Pro Rata Share of the Equity Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Corporation and stating therein the quantity of Equity Securities to be purchased. Notwithstanding the foregoing, the Corporation shall not be required to offer or sell such Equity Securities to any holder, or Affiliate of a holder, of Preferred Stock who would cause the Corporation to be in violation of applicable state or federal securities laws by virtue of such offer or sale.

3. Offer of Unsubscribed Shares. If not all of the holders of Preferred Stock elect to purchase their Pro Rata Share of the Equity Securities (directly or through an Affiliate), then the Corporation shall promptly notify in writing the holders of Preferred Stock who do so elect (directly or through an Affiliate) and shall offer such holders of Preferred Stock the right to acquire (directly or through an Affiliate) the number of unsubscribed Equity Securities obtained by multiplying the percentage of the shares offered by the Corporation pursuant to Section 2 of this Article which such holder, or Affiliates of such holder, of Preferred Stock actually purchased by the number of Equity Securities left unsubscribed after the conclusion of the procedure set forth in Section 2 of this Article. The holders of Preferred Stock (or such Affiliates) shall have five (5) days after receipt of such notice to

notify the Corporation of their election to purchase all or a portion of the unsubscribed Equity Securities. If the holders of Preferred Stock (and such Affiliates) fail to exercise in full the rights of first refusal set forth in this Article, the Corporation shall have sixty (60) days thereafter to sell the Equity Securities in respect of which the rights of the holders of Preferred Stock were not exercised, at a price and upon terms and conditions no more favorable in any material respect to the purchasers thereof than specified in the Corporation's notice to the Preferred Holders pursuant to Section 2 of this Article. If the Corporation has not sold such Equity Securities within sixty (60) days after the notice provided pursuant to Section 2 of this Article, the Corporation shall not thereafter issue or sell any Equity Securities, without first offering the Equity Securities to the holders of Preferred Stock in the manner provided above.

4. Definitions. For purposes of this Article FIFTH:

(a) "Equity Securities" shall mean any Common Stock that is issued by the Corporation, or pursuant to Section 3(f)(ii)(C) hereof, that the Corporation shall be deemed to have issued, other than (i) Excluded Stock, and (ii) shares of Series D Preferred Stock.

(b) "Pro Rata Share" of any holder of Preferred Stock shall mean the ratio of (a) the number of shares of Common Stock issued or issuable upon conversion of the Preferred Stock held by such holder (together with Affiliates of such Holder) immediately prior to the issuance of the Equity Securities to (b) the total number of shares of Common Stock issued or issuable upon conversion of the Preferred Stock owned by all holders of Preferred Stock immediately prior to the issuance of the equity securities.

5. Waiver. Notwithstanding anything herein to the contrary, the right of first refusal set forth in this ARTICLE FIFTH may be waived, either prospectively or retroactively and either generally or in a particular instance, by the vote or written consent of the holders of at least sixty percent (60%) of the outstanding Preferred Stock, voting together as a single class (on an as-converted to Common Stock basis); provided, however, that such waiver shall apply equally to all holders of Preferred Stock.

SIXTH: Indemnification.

1. General. The Corporation shall indemnify its officers and directors to the fullest extent permitted by the Delaware General Corporation Law.

2. Extent. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnitee") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that such Indemnitee, or a person for whom such Indemnitee is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnitee. Notwithstanding the preceding sentence, except as otherwise provided in Section 4 of this Article, the Corporation shall be required to indemnify an Indemnitee in connection with a Proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such Proceeding (or part thereof) by the Indemnitee was authorized by the Directors.

3. Expenses. The Corporation shall pay the expenses (including attorneys' fees) reasonably incurred by an Indemnitee in defending any Proceeding in advance of its final disposition, provided, however, that such payment of expenses in advance of the final disposition of the Proceeding

shall be made only upon receipt of an undertaking by the Indemnitee to repay all amounts advanced if it should ultimately be determined that the Indemnitee is not entitled to be indemnified under this Article or otherwise.

4. Time Limits. If a claim for indemnification or payment of expenses under this Article is not paid in full within sixty (60) days after a written claim therefor by the Indemnitee has been received by the Corporation, the Indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the reasonable expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnitee is not entitled to the requested indemnification or payment of expenses under applicable law.

5. Rights Not Exclusive. The rights conferred on any Indemnitee by this Article shall not be exclusive of any other rights which such Indemnitee may have or hereafter acquire under any statute, provision of this Amended and Restated Certificate of Incorporation, the Corporation's Bylaws, or any other agreement, vote of stockholders or disinterested directors or otherwise.

6. Reduction. The Corporation's obligation if any, to indemnify or to advance expenses to any Indemnitee who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Indemnitee may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or nonprofit enterprise.

7. Repeal Not Effective. Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any Indemnitee in respect of any act or omission occurring prior to the time of such repeal or modification.

8. Indemnification of Others. This Article shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Indemnitee when and as authorized by appropriate corporate action.

SEVENTH: Board of Directors.

1. Election of Directors. The election of directors need not be by written ballot unless the Bylaws shall so provide.

2. Authority of Directors. Except as otherwise provided in this Amended and Restated Certificate of Incorporation, the Board of Directors is expressly authorized to make, alter, amend and repeal any or all of the Bylaws.

3. Exculpation. To the fullest extent permitted by law, 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. If the Delaware General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Seventh, Section 3 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 Delaware General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article Seventh, Section 3 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, 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.

EIGHTH: Corporate Opportunities.

1. Certain Acknowledgments. In recognition and anticipation that (i) certain directors, officers, employees and/or other representatives of Thomas, McNerney & Partners, L.P., Primus Venture Partners V, L.L.C., Investor Growth Capital Limited, Investor Group LP, CID Seed Fund, L.P., Early Stage Partners, L.P., Memphis Biomed Partners, L.P., and Emerging Technology Ventures, L.P.. (collectively, the "Venture Firms") may serve as directors or officers of the Corporation, (ii) the Venture Firms and their respective Affiliated Companies may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) that the Corporation and Affiliated Companies thereof may engage in material business transactions with the Venture Firms and their respective Affiliated Companies and that the Corporation is expected to benefit therefrom, the provisions of this Article VIII are set forth to regulate and define the conduct of certain affairs of the Corporation as they may involve the Venture Firms or their respective Affiliated Companies and their directors, officers, employees and other representatives, and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

2. Competition and Corporate Opportunities. None of the Venture Firms or any of their respective Affiliated Companies shall have any duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its Affiliated Companies, and none of the Venture Firms or any director, officer, employee or other representative thereof shall be liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of any such activities of the Venture Firms or any of their respective Affiliated Companies. In the event that any of the Venture Firms or their respective Affiliated Companies acquires knowledge of a potential transaction or matter which may be a corporate opportunity for itself and the Corporation or any of its Affiliated Companies, none of the Venture Firms or any of their respective Affiliated Companies shall have any duty to communicate or offer such corporate opportunity to the Corporation or any of its Affiliated Companies and shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty as a stockholder of the Corporation solely by reason of the fact that any of the Venture Firms or their Affiliated Companies pursues or acquires such corporate opportunity for itself, directs such corporate opportunity to another person, or does not communicate information regarding such corporate opportunity to the Corporation.

3. Certain Matters Deemed Not Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this Article VIII, a corporate opportunity shall not be deemed to belong to the Corporation if it is a business opportunity that the Corporation is not permitted to undertake under the terms of Article III of the Restated Certificate or that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

4. Agreements and Transactions with the Venture Firms. In the event that any of the Venture Firms or their respective Affiliated Companies enters into an agreement or transaction with the Corporation or any of its Affiliated Companies, a director or officer of the Corporation who is also a director, officer, employee or other representative of any of the Venture Firms shall have fully satisfied and fulfilled the fiduciary duty of such director or officer to the Corporation and its stockholders with respect to such agreement or transaction, if:

- a. The agreement or transaction was approved, after being made aware of the material facts of the relationship between each of the Corporation or an Affiliated Company thereof and any of the

Venture Firms or their respective Affiliated Companies and the material terms and facts of the agreement or transaction, by (i) an affirmative vote of a majority of the members of the Board of Directors of the Corporation who are not persons or entities with an interest in the agreement or transaction ("Interested Persons"), (ii) an affirmative vote of a majority of the members of a committee of the Board of Directors of the Corporation consisting solely of members who are not Interested Persons or (iii) one or more of the Corporation's officers or employees who are not Interested Persons and who were authorized by the Board of Directors of the Corporation or committee thereof in the manner set forth in (i) and (ii) above;

- b. The agreement or transaction was fair to the Corporation at the time the agreement or transaction was entered into by the Corporation; or
- c. The agreement or transaction was approved, after being made aware of the material facts of the relationship between each of the Corporation or an Affiliated Company thereof and the Venture Firms or any of their respective Affiliated Companies and the material terms and facts of the agreement or transaction, by an affirmative vote of a majority of the shares of the Corporation's capital stock entitled to vote, excluding any shares held by such Venture Firm, as the case may be, any Affiliated Company thereof, as the case may be, or Interested Person.

5. Certain Definitions. For purposes of this Article VIII, "Affiliated Company" shall mean (i) in respect of any Venture Firm, any entity which is controlled by, or under common control with, such Venture Firm (other than the Corporation and any entity that is controlled by the Corporation), and (ii) in respect of the Corporation shall mean any entity controlled by the Corporation.

6. Amendment of this Article. Notwithstanding anything to the contrary elsewhere contained in the Restated Certificate, the affirmative vote of the holders of at least two-thirds of the voting power of all shares of Preferred Stock then outstanding and held by the Venture Firms, voting together as a single class on an as-if-converted to common stock basis, shall be required to alter, amend or repeal, or to adopt any provision inconsistent with, this Article VIII. In addition, in the event any alteration, amendment, change or adoption of any provision inconsistent with this Article VIII would impact any individual party in a different manner than the other parties to whom this Article VIII applies the affirmative vote or written consent of such party shall be required.

7. Deemed Notice. Any person or entity purchasing or otherwise acquiring any interest in any shares of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article VIII.

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IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed this 16th day of July, 2010.

AXIOMED SPINE CORPORATION

By: 

Printed: Patrick A. McBrayer

Title: President and Chief Executive Officer