

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
AVID RADIOPHARMACEUTICALS, INC.**

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

Avid Radiopharmaceuticals, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"),

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is Avid Radiopharmaceuticals, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on September 17, 2004.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED**, that the Restated Certificate of Incorporation (the "*Restated Certificate*") of this corporation be amended and restated in its entirety to read as follows:

**FIRST:** The name of this corporation is Avid Radiopharmaceuticals, Inc. (the "*Corporation*")

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

**THIRD:** The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 20,000,000 shares of Voting Common Stock, \$0.001 par value per share ("*Voting Common Stock*"), (ii) 650,000 shares of Non-Voting Common Stock, \$0.001 par value per share ("*Non-Voting Common Stock*") and together with the Voting Common Stock, the "*Common Stock*") and (iii) 9,887,467 shares of Preferred Stock, \$0.001 par value per share ("*Preferred Stock*"). The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation. Unless otherwise indicated, references to "Sections" or "Subsections" in this Article refer to sections and subsections of this Article Fourth.

**A. COMMON STOCK**

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein and as may be designated by resolution of the Board of Directors with respect to any series of Preferred Stock as authorized herein.

2. Voting. The holders of the Voting Common Stock are entitled to one vote for each share of Voting Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Voting Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The holders of Non-Voting Common Stock shall not be entitled to vote at any meeting of the holders of Voting Common Stock (or pursuant to any written actions in lieu of meeting). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3. Dividends. Subject to the terms of this Restated Certificate, dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, whether voluntary or involuntary, each issued and outstanding share of Common Stock shall entitle the holder thereof to receive an equal portion of the net assets of the Corporation available for distribution to the holders of Common Stock in accordance with Section C.2(c).

5. Redemption. The Common Stock is not redeemable.

6. Conversion of Non-Voting Common Stock.

(a) Right to Convert. Each share of Non-Voting Common Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into one fully paid and nonassessable share of Voting Common Stock.

(b) Mechanics of Conversion.

(i) In order for a holder of Non-Voting Common Stock to voluntarily convert shares of Non-Voting Common Stock into shares of Voting Common Stock, such holder shall surrender the certificate or certificates for such shares of Non-Voting Common Stock (or, if such registered 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), at the office of the transfer agent for the Non-Voting Common Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Non-Voting Common Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Voting Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent of such certificates (or lost certificate affidavit and agreement) and notice (or by the Corporation if the Corporation serves as its own transfer agent) shall be the time of conversion (the "*Non-Voting Common Stock Conversion Time*"), and the shares of Voting Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as reasonably practicable after the Non-Voting Common Stock Conversion Time, issue and deliver to such holder of Non-Voting Common Stock, or to his, her or its nominees, a certificate or certificates for the number of shares of Voting Common Stock to which such holder shall be entitled.

(ii) The Corporation shall at all times when the Non-Voting Common Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Non-Voting Common Stock, such number of its duly authorized shares of Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Non-Voting Common Stock and if at any time the number of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Non-Voting Common Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(iii) All shares of Non-Voting Common Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the applicable Non-Voting Common Stock Conversion Time, except only the right of the holders thereof to receive shares of Voting Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Non-Voting Common Stock so converted shall be retired and cancelled and shall not be reissued as shares of such series, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Non-Voting Common Stock accordingly.

(iv) The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Voting Common Stock upon conversion of shares of Non-Voting Common Stock pursuant to this

Section A.6. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Voting Common Stock in a name other than that in which the shares of Non-Voting Common Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

7. Mandatory Conversion.

(a) Upon the closing of the sale of shares of Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended (the date of the closing of such public offering, the "*Non-Voting Common Stock Mandatory Conversion Date*"), (i) all outstanding shares of Non-Voting Common Stock shall automatically be converted into shares of Voting Common Stock and (ii) such shares may not be reissued by the Corporation as shares of Non-Voting Common Stock. Each share of Non-Voting Common Stock shall be convertible in accordance with this Section A.7, without the payment of additional consideration by the holder thereof, into one fully paid and nonassessable share of Voting Common Stock.

(b) All holders of record of shares of Non-Voting Common Stock shall be given written notice of the Non-Voting Common Stock Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Non-Voting Common Stock pursuant to this Section A.7. Such notice need not be given in advance of the occurrence of the Non-Voting Common Stock Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Non-Voting Common Stock. Upon receipt of such notice, each holder of shares of Non-Voting Common Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Voting Common Stock to which such holder is entitled pursuant to this Section A.7. On the Non-Voting Common Stock Mandatory Conversion Date, all outstanding shares of Non-Voting Common Stock shall be deemed to have been converted into shares of Voting Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Non-Voting Common Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Voting Common Stock into which such Non-Voting Common Stock has been converted, and payment of any declared but unpaid dividends thereon. 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 his, her or its attorney duly authorized in writing. As soon as practicable after the Non-Voting Common Stock Mandatory Conversion Date and the surrender of the certificate or certificates for Non-Voting Common Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Voting Common Stock issuable on such conversion in accordance with the provisions hereof.

(c) All certificates evidencing shares of Non-Voting Common Stock which are required to be surrendered for conversion in accordance with the provisions hereof

shall, from and after the Non-Voting Common Stock Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Non-Voting Common Stock represented thereby converted into Voting Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Non-Voting Common Stock may not be reissued as shares of Non-Voting Common Stock, 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 Non-Voting Common Stock accordingly.

## B. PREFERRED STOCK

1. Issuance and Reissuance. Subject to the other terms of this Restated Certificate, Preferred Stock may be issued from time to time in one or more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, as stated or expressed herein.

## C. SERIES A PREFERRED STOCK, SERIES B PREFERRED STOCK AND SERIES C PREFERRED STOCK

2,673,073 shares of the authorized Preferred Stock are hereby designated "*Series A Preferred Stock*," 1,448,473 shares of the authorized Preferred Stock are hereby designated "*Series B Preferred Stock*" and 5,765,921 shares of the authorized Preferred Stock are hereby designated "*Series C Preferred Stock*", each with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. The Series A Preferred Stock and the Series B Preferred Stock shall sometimes collectively be referred to herein as "*Junior Preferred Stock*."

### 1. Dividends.

(a) *Series C Preferred Stock.* The Series C Preferred Stock shall be entitled to dividends as follows: (i) from and after the date of the issuance of any share of Series C Preferred Stock until the third anniversary thereof, the holders of Series C Preferred Stock shall be entitled to receive non-cumulative dividends, out of any assets of the Corporation legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Junior Preferred Stock or the Common Stock, at the rate equal to 10% of the Series C Original Issue Price per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), payable quarterly when, as and if declared by the Board of Directors and (ii) from and after the third anniversary of the date of issuance of any share of Series C Preferred Stock, the holders of Series C Preferred Stock shall be entitled to receive cumulative dividends, out of any assets of the Corporation legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on Junior Preferred Stock and the Common Stock which dividend shall

accrue daily (whether or not declared or earned) at the rate per annum equal to 10% of the Series C Original Issue Price per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), payable quarterly, when as and if declared by the Board of Directors (collectively, clauses (i) and (ii), the "*Series C Dividend*"). As used herein, the "*Series C Original Issue Price*" means \$4.51084767.

(b) *Series A Preferred Stock and Series B Preferred Stock.* After payment of the Series C Dividend, the holders of Series A Preferred Stock and the Series B Preferred Stock shall be entitled to receive on a pari passu basis non-cumulative dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock, at the rate per share equal to 10% of the Series A Original Issue Price or Series B Original Issue Price (as applicable) (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), payable quarterly when, as and if declared by the Board of Directors. As used herein, the "*Series A Original Issue Price*" means \$1.46 and the "*Series B Original Issue Price*" means \$3.46.

(c) After payment of the dividends set forth in subsections 1(a) and 1(b), any additional dividends or distributions shall be distributed among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted to Common Stock at the then effective applicable Preferred Stock Conversion Price.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) Preferential Payments to Holders of Series C Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series C Preferred Stock then outstanding shall be entitled to receive, prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any of the assets of the Corporation to the holders of the Junior Preferred Stock and the Common Stock, out of the assets available for distribution to its stockholders, an amount equal to the Series C Original Issue Price plus any dividends declared but unpaid thereon (the "*Series C Liquidation Preference*"). If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series C Preferred Stock the full amount of the Series C Liquidation Preference, the holders of shares of Series C Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full

(b) Preferential Payments to Holders of Series A Preferred Stock and Series B Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of the Series C Liquidation Preference, the

holders of shares of Series A Preferred Stock and Series B Preferred Stock then outstanding shall be entitled to be receive on a pari passu basis, prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any of the assets of the Corporation to the holders of the Common Stock, out of the assets available for distribution to its stockholders on parity with one another, an amount equal to the Series A Original Issue Price or Series B Original Issue Price, as applicable, plus any dividends declared but unpaid thereon (the "**Junior Preferred Stock Liquidation Preference**"). If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock and Series B Preferred Stock the full amount of the Junior Liquidation Preference, the holders of shares of Series A Preferred Stock and Series B Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(c) Distribution of Remaining Assets. After the payment of the Series C Liquidation Preference and the Junior Preferred Stock Liquidation Preference, the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating the shares of Preferred Stock for this purpose as if they had been converted to Common Stock pursuant to the terms of this Restated Certificate immediately prior to such dissolution, liquidation or winding up of the Corporation; provided, however, that the holders of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall cease to participate in the distributions pursuant to this Subsection 2(c) at such time as the aggregate amount of distributions per share of applicable Preferred Stock which such holder has received pursuant Subsections 2(a), 2(b) and 2(c) equals (as applicable) the greater of (1) the Series A Maximum Participation Amount, Series B Maximum Participation Amount or Series C Maximum Participation Amount (as applicable) and (2) the amount such holder of Preferred Stock would have received if such holder had converted his, her or its shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock into Voting Common Stock immediately prior to such dissolution, liquidation or winding up of the Corporation.

(d) As used herein:

(i) "**Series A Maximum Participation Amount**" means (A) at any time through the First Threshold Date (as defined below), three (3) times the Series A Original Issue Price, (ii) at any time after the First Threshold Date through the Second Threshold Date (as defined below), three and one-half (3.5) times the Series A Original Issue Price, or (iii) after the Second Threshold Date, four (4) times the Series A Original Issue Price per share.

(ii) "**Series B Maximum Participation Amount**" means (A) at any time through the First Threshold Date (as defined below), three (3) times the Series B Original Issue Price, (ii) at any time after the First Threshold Date through the Second Threshold Date (as defined below), three and one-half (3.5) times the Series B Original Issue Price, or (iii) after the Second Threshold Date, four (4) times the Series B Original Issue Price per share.

(iii) "*Series C Maximum Participation Amount*" means (A) at any time through the First Threshold Date (as defined below), three (3) times the Series C Original Issue Price, (ii) at any time after the First Threshold Date through the Second Threshold Date (as defined below), three and one-half (3.5) times the Series C Original Issue Price, or (iii) after the Second Threshold Date, four (4) times the Series C Original Issue Price per share.

(iv) "*First Threshold Date*" means the third (3<sup>rd</sup>) anniversary of the Series C Original Issue Date

(v) "*Second Threshold Date*" means the fourth (4<sup>th</sup>) anniversary of the Series C Original Issue Date.

(c) Deemed Liquidation Events.

(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 sixty-six and two-thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the Series C Preferred Stock elect otherwise by written notice given to the Corporation prior to the effective date of any such event:

(A) a merger or consolidation in which

(I) the Corporation is a constituent party or

(II) 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 C.2(d)(i), all shares of Common Stock issuable upon exercise of Options (as defined in Section C.4, below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined in Section C.4, below) 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, 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, transfer or other disposition is to a wholly owned subsidiary of the Corporation; or



(C) any other transaction or series of related transactions in which the shares of capital stock of the Corporation outstanding immediately prior to such transaction or transactions cease to represent at least a majority, by voting power, of the capital stock of the Corporation immediately following such transaction or transactions (provided that, for the purpose of this Subsection C.2(d)(i), all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such transaction or transactions or upon conversion of Convertible Securities outstanding immediately prior to transaction or transactions shall be deemed to be outstanding immediately prior to such transaction or transactions and, if applicable, converted or exchanged in such transaction or transactions on the same terms as the actual outstanding shares of Common Stock are converted or exchanged).

(ii) The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection C.2(d)(i)(A)(I) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections C.2(a), C.2(b) and C.2(c) above.

(iii) In connection with any Deemed Liquidation Event, if the consideration received by this Corporation is other than cash, its value will be deemed its fair market value as mutually determined by the Board of Directors of the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock voting together as a single class. Any securities shall be valued as follows:

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

- (I) 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 twenty (20) trading day period ending three (3) trading days prior to the closing of such Deemed Liquidation Event;
- (II) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) trading day period ending three (3) trading days prior to the closing; and
- (III) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an

appropriate discount from the market value determined as above in (A) (I), (II) or (III) to reflect the approximate fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(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 the definitive agreements governing such Deemed Liquidation Event.

(iv) The Corporation shall give the holders of Preferred Stock notice of any liquidation, dissolution, or winding up of the Corporation or Deemed Liquidation Event in accordance with Subsection C.4(j) below.

(v) In the event the requirements of this Subsection 2(e)(iii) and (iv) are not complied with, this corporation shall forthwith either: (1) cause the closing of such Deemed Liquidation Event to be postponed until such time as such requirements have been complied with or (2) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice of liquidation, dissolution, or winding up of the Corporation or Deemed Liquidation Event.

### 3. Voting.

(a) On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Voting Common Stock into which the shares of Preferred Stock, held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Subsection C.3(b), C.3(c) or C.3(d) below, holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall vote together with the holders of Voting Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(b) The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "*Series A Director*") so long as such holders continue to hold an amount of such shares equal to at least ten percent (10%) of the capital stock of the Corporation (subject to appropriate adjustment in the event of any dividend, stock split, combination or other similar recapitalization affecting such shares), on a fully diluted, as-if converted to Common Stock basis. Any Series A Director so elected may be removed without cause by, and only by, the affirmative vote of the majority of the holders of Series A Preferred Stock, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders. At any meeting held for the purpose of electing a Series A Director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such Series A Director shall constitute a quorum for the purpose of electing such Series A

Director. A vacancy in the Series A Directorship shall be filled only by vote or written consent in lieu of a meeting of the holders of Series A Preferred Stock.

(c) The holders of record of the shares of Series C Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "*Series C Director*") so long as such holders continue to hold an amount of such shares equal to at least ten percent (10%) of the capital stock of the Corporation (subject to appropriate adjustment in the event of any dividend, stock split, combination or other similar recapitalization affecting such shares), on a fully diluted, as-if converted to Common Stock basis. Any Series C Director so elected may be removed without cause by, and only by, the affirmative vote of the majority of the holders of Series C Preferred Stock, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders. At any meeting held for the purpose of electing a Series C Director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such Series C Director shall constitute a quorum for the purpose of electing such Series C Director. A vacancy in the Series C Directorship shall be filled only by vote or written consent in lieu of a meeting of the holders of Series C Preferred Stock.

(d) At any time when shares of Series C Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of the holders of either (i) a majority of the then outstanding shares of Series C Preferred Stock, or (ii) sixty-one percent (61%) of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, the Corporation shall not, either directly or by amendment, merger, consolidation or otherwise:

(i) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing (each a "*Series C Prohibited Transaction*") if the per share amount the holders of Series C Preferred Stock would receive upon the consummation of a Series C Prohibited Transaction would be less than (x) three (3) times the Series C Original Issue Price if such Series C Prohibited Transaction were to be consummated on or prior to Second Threshold Date or (y) five (5) times the Series C Original Issue Price if such Series C Prohibited Transaction were to be consummated at any time after the Second Threshold Date;

(ii) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation;

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

(iv) purchase or redeem any shares of capital stock of the Corporation or permit any subsidiary of the Corporation to take any such action other than securities repurchased from employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such

employment or service at a cost pursuant to agreements with such persons approved by the Board of Directors;

(v) pay or declare any dividend or other distribution on any share of Common Stock or Preferred Stock:

(vi) increase or decrease the number of shares of capital stock of the Corporation subject to any employee stock option plan, stock bonus plan, stock purchase plan or other management equity program:

(vii) license, transfer or create any lien or other encumbrance on all or substantially all of the Corporation's assets to a third party, except in the ordinary course of business; or

(viii) authorize the issuance of securities having a preference over or on par with the Series C Preferred Stock.

#### 4. Optional Conversion.

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

##### (a) Right to Convert.

(i) *Series A Preferred Stock.* Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Voting Common Stock as is determined by dividing the Series A Reference Price by the Series A Conversion Price (as defined below) in effect at the time of conversion; where the "*Series A Reference Price*" means \$1.46. The "*Series A Conversion Price*" shall initially be equal to the Series A Original Issue Price and shall be subject to adjustment as provided below.

(ii) *Series B Preferred Stock.* Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Voting Common Stock as is determined by dividing the Series B Reference Price by the Series B Conversion Price (as defined below) in effect at the time of conversion; where the "*Series B Reference Price*" means \$3.46. The "*Series B Conversion Price*" shall initially be equal to the Series B Original Issue Price and shall be subject to adjustment as provided below.

(iii) *Series C Preferred Stock.* Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Voting Common Stock as is determined by dividing the Series C Reference Price by the Series C Conversion Price (as defined below) in effect at the time of conversion; where the "*Series C Reference Price*" means \$4.51084767. The "*Series C*

*Conversion Price*" shall initially be equal to the Series C Original Issue Price and shall be subject to adjustment as provided below.

(iv) In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 6 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, 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 liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

(b) Fractional Shares. No fractional shares of Voting Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Voting Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Voting Common Stock and the aggregate number of shares of Voting Common Stock issuable upon such conversion.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Voting Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered 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), at the office of the transfer agent for the Preferred Stock, as applicable, (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Voting Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent of such certificates (or lost certificate affidavit and agreement) and notice (or by the Corporation if the Corporation serves as its own transfer agent) shall be the time of conversion (the "*Conversion Time*"), and the shares of Voting Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as reasonably practicable after the Conversion Time, issue and deliver to such holder of Preferred Stock, or to

his, her or its nominees, a certificate or certificates for the number of shares of Voting Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock such number of its duly authorized shares of Voting 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 authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price below the then par value of the shares of Voting Common Stock issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, respectively, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Voting Common Stock at such adjusted Series A Conversion Price, Series B Conversion Price or Series C Conversion Price.

(iii) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the applicable Conversion Time, except only the right of the holders thereof to receive shares of Voting Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of such series, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(iv) Upon any such conversion, no adjustment to the applicable Preferred Stock Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Voting Common Stock issued upon such conversion.

(v) The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Voting Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Voting Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Series A Conversion Price, Series B Conversion Price and Series C Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

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

(B) "*Series A Original Issue Date*" shall mean December 2, 2005.

(C) "*Series B Original Issue Date*" shall mean December 2, 2005.

(D) "*Series C Original Issue Date*" shall mean May 7, 2007.

(E) "*Preferred Stock Conversion Price*" shall mean, as the context requires and as applicable, the Series A Conversion Price, the Series B Conversion Price and/or the Series C Conversion Price.

(F) "*Preferred Stock Original Issue Date*" shall mean, as the context requires and as applicable, the Series A Original Issue Date, the Series B Original Issue date and/or the Series C Original Issue Date.

(G) "*Convertible Securities*" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Voting Common Stock, but excluding Options.

(H) "*Additional Shares of Common Stock*" shall mean all shares of Common Stock or other shares of capital stock issued (or, pursuant to Subsection C.4(d)(iii) below, deemed to be issued) by the Corporation after the applicable Preferred Stock Original Issue Date with respect to such applicable series of Preferred Stock, other than the following ("*Exempted Securities*"):

(I) shares of Common Stock issued or deemed issued as a dividend or distribution on Preferred Stock;

(II) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection C.4(e) or C.4(f) below;

(III) up to 3,100,000 shares of Common Stock (subject to appropriate adjustment in the

event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), issued or deemed issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, whether issued before or after the applicable Preferred Stock Original Issue Date (provided that any Options for such shares that expire or terminate unexercised or any restricted stock repurchased by the Corporation at cost shall not be counted toward such maximum number unless and until such shares are regranted as new stock grants (or as new Options) pursuant to the terms of any such plan, agreement or arrangement); or

- (IV) shares of Common Stock actually issued upon the conversion of the Preferred Stock; or
- (V) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation; or
- (VI) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors.

(ii) No Adjustment of Preferred Stock Conversion Price. No adjustment in the applicable Preferred Stock Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Preferred Stock Conversion Price, as the case may be, in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, (b) with respect to the Series A



Conversion Price, prior to such issuance or deemed issuance, the Corporation provides notice to the holders of Series A Preferred Stock of such issuance or deemed issuance and receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock, (c) with respect to the Series B Conversion Price, prior to such issuance or deemed issuance, the Corporation provides notice to the holders of Series A Preferred Stock of such issuance or deemed issuance and receives written notice from the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of Series B Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock or (d) with respect to the Series C Conversion Price, prior to such issuance or deemed issuance, the Corporation provides notice to the holders of Series C Preferred Stock of such issuance or deemed issuance and receives written notice from the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of Series C Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(A) If the Corporation at any time or from time to time after the applicable Preferred Stock Original Issue Date, as the case may be, shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the applicable Preferred Stock Conversion Price pursuant to the terms of Subsection C.4(d)(iv) below, are revised either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms (other than as a result of automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the applicable Preferred Stock Conversion Price, computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such applicable Preferred Stock Conversion Price as would have been obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security.

Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of (x) increasing the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price on the original adjustment date, and (ii) the Series A Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date. (y) increasing the Series B Conversion Price to an amount which exceeds the lower of (i) the Series B Conversion Price on the original adjustment date, and (ii) the Series B Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date or (z) increasing the Series C Conversion Price to an amount which exceeds the lower of (i) the Series C Conversion Price on the original adjustment date, and (ii) the Series C Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities), the issuance of which did not result in an adjustment to the applicable Preferred Stock Conversion Price pursuant to the terms of Subsection C.4(d)(iv) below (either because the consideration per share (determined pursuant to Subsection C.4(d)(v) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Preferred Stock Conversion Price then in effect, or because such Option or Convertible Security was issued before the applicable Preferred Stock Original Issue Date), are revised after the applicable Preferred Stock Original Issue Date (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms), to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection C.4(d)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective and an adjustment to the applicable Preferred Stock Conversion Price shall be made in accordance with the terms of this Restated Certificate.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the applicable Preferred Stock Conversion Price pursuant to the terms of Subsection C.4(d)(iv) below, the applicable Preferred Stock Conversion Price shall be readjusted to such applicable Preferred Stock Conversion Price as would have resulted had such Option or Convertible Security (or portion thereof) never been issued.

(iv) Adjustment of Preferred Stock Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the applicable Preferred Stock Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection C.4(d)(iii)), without consideration or for a consideration per share less than the applicable Preferred Stock Conversion Price in effect immediately prior to such issue, then the

applicable Preferred Stock Conversion Price shall be reduced to the price determined by the following formula:

$$CP_2 = CP_1 * (A + B) \div (A \div C)$$

For purposes of the foregoing formula, the following definitions shall apply:

(A) CP2 shall mean the applicable Preferred Stock Conversion Price, in effect immediately after such issue of Additional Shares of Common Stock

(B) CP1 shall mean the applicable Preferred Stock Conversion Price, in effect immediately prior to such issue of Additional Shares of Common Stock;

(C) "A" shall mean the number of shares of Common Stock outstanding and deemed outstanding immediately prior to such issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise or conversion of Options or Convertible Securities (including the Preferred Stock) outstanding immediately prior to such issuance or conversion;

(D) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP<sub>1</sub> (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP<sub>1</sub>); and

(E) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(v) Determination of Consideration. For purposes of this Subsection C.4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

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

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

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the

Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection C.4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

- (I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
- (II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the applicable Preferred Stock Original Issue Date effect a subdivision of the outstanding Common Stock without a comparable subdivision of the applicable Preferred Stock or combine the outstanding shares of one or more series of Preferred Stock without a comparable combination of the Common Stock, the applicable Preferred Stock Conversion Price 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 applicable Preferred Stock Original Issue Date combine the outstanding shares of Common Stock without a comparable combination of the applicable Preferred Stock or effect a subdivision of the outstanding shares of one or more series of Preferred Stock without a comparable subdivision of the Common Stock, the applicable Preferred Stock Conversion Price 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.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the applicable Preferred Stock Original Issue 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 applicable Preferred Stock Conversion Price, 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 Preferred Stock Conversion Price, then in effect by a fraction:

(i) 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

(ii) 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.

Notwithstanding the foregoing Subsection (f), (a) 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 applicable Preferred Stock Conversion Price, shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Preferred Stock Conversion Price, shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions and (b) no such adjustment shall be made if the holders of one or more series 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 such applicable Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of such applicable 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.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the applicable Preferred Stock Original Issue Date shall make or issue, or fix a record date for the determination of holders of capital

stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section C.1 of this Article Fourth do not apply to such dividend or distribution, then and in each such event the holders of the applicable Preferred Stock shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of the applicable Preferred Stock had been converted into Voting Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc.

(i) Subject to the provisions of Subsection C.2(c), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections (e), (f) or (g) of this Section C.4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Voting Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Voting Common Stock of the Corporation issuable upon conversion of one share of such Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; 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 C.4 with respect to the rights and interests thereafter of the holders of such Preferred Stock, to the end that the provisions set forth in this Section C.4 (including provisions with respect to changes in and other adjustments of the applicable Preferred Stock 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 such Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Preferred Stock Conversion Price pursuant to this Section C.4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 30 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the applicable Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the applicable Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than 20 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the applicable Preferred Stock Conversion Price then in effect, and (ii) the number of shares of Voting Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such Preferred Stock.

(j) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed sent to such holder if deposited in the United States mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

#### 5. Mandatory Conversion.

(a) Upon the closing of the sale of shares of Common Stock to the public at a price of at least \$9.06 per share (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$25,000,000 of gross proceeds to the Corporation and involves listing or quotation on the New York Stock Exchange or The NASDAQ Stock Market LLC, (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Voting Common Stock, at the then effective conversion rate determined in accordance with Subsection C.4 using the then effective applicable Preferred Stock Conversion Price and (ii) such shares may not be reissued by the Corporation as shares of such series.

(b) Upon the written consent or affirmative vote of the holders of sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of any class of Preferred Stock, voting as a separate class, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, (i) all outstanding shares of such class of Preferred Stock shall automatically be converted into shares of Voting Common Stock, in accordance with

Subsection C.4 using the then-effective applicable Preferred Stock Conversion Price and (ii) such shares may not be reissued by the Corporation as shares of such series.

(c) The date of any of the triggering events listed in Subsections (a) and (b), above shall be referred to herein as a "*Mandatory Conversion Date*."

(d)

(i) All holders of record of shares of the applicable Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section C.5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of such applicable Preferred Stock. Upon receipt of such notice, each holder of shares of such applicable Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Voting Common Stock to which such holder is entitled pursuant to this Section C.5. On a Mandatory Conversion Date, all outstanding shares of such applicable Preferred Stock shall be deemed to have been converted into shares of Voting Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to such applicable Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Voting Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Voting Common Stock into which such applicable Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. 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 his, her or its attorney duly authorized in writing. As soon as practicable after a Mandatory Conversion Date and the surrender of the certificate or certificates for applicable Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Voting Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection C.4(b) in respect of any fraction of a share of Voting Common Stock otherwise issuable upon such conversion.

(ii) All certificates evidencing shares of such applicable Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after a Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of such applicable Preferred Stock represented thereby converted into Voting Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted applicable Preferred Stock 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 such applicable Preferred Stock accordingly.

## 6. Redemption of Preferred Stock



(a) Series C Redemption.

(i) Redemption. All 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 Original Issue Price plus any declared but unpaid dividends (the "*Series C Redemption Price*"), in three (3) equal annual installments commencing 90 days after receipt by the Corporation at any time on or after the fifth (5<sup>th</sup>) anniversary of the Series C Original Issue Date from the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of Series C Preferred Stock (the "*Redeeming Series C Holders*"), of written notice (the "*Series C Redemption Request*") requesting redemption of all shares of Series C Preferred Stock (the date of each such installment shall be referred to as a "*Series C Redemption Date*"). No shares of Series A Preferred Stock or Series B Preferred Stock may be redeemed until all shares of Series C Preferred Stock have been redeemed.

(ii) Notice to Series A and Series B Preferred Stockholders. Within ten (10) days after delivering the Series C Redemption Request to the Corporation, the Corporation shall provide to each holder of Series A and Series B Preferred Stock, at their respective post office addresses last shown on the records of the Corporation, a copy of the Series C Redemption Request.

(iii) Redemption Notice. After delivery of the Series C Redemption Request to the Corporation, written notice of the mandatory redemption (the "*Series C Redemption Notice*") shall be mailed, postage prepaid, to each holder of record of Series C Preferred Stock, at its post office address last shown on the records of the Corporation, not less than 40 days prior to each Series C Redemption Date. Each Series C Redemption Notice shall state:

(A) the number of shares of Series C Preferred Stock held by the holder that the Corporation shall redeem on the Series C Redemption Date specified in the Series C Redemption Notice;

(B) the Series C Redemption Date and the Series C Redemption Price;

(C) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section C.4(a)(iii)); and

(D) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series C Preferred Stock to be redeemed.

(iv) Series C Redemption Mechanics. 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, the Corporation shall redeem a pro rata portion of each Series C Preferred Stock holder's redeemable shares out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of such 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.

(v) Surrender of Certificates; Payment. On or before the applicable Series C Redemption Date, each holder of shares of Series C Preferred Stock to be redeemed on such Series C Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section C.4 hereof, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series C Redemption Notice, and thereupon the Series C Redemption Price for such shares 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 Series C Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series C Preferred Stock shall promptly be issued to such holder.

(vi) Rights Subsequent to Redemption. If the Series C Redemption Notice shall have been duly given, and if on the applicable Series C Redemption Date the Series C Redemption Price payable upon redemption of the shares of Series C Preferred Stock to be redeemed on such Series C Redemption Date 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 Series C Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series C Preferred Stock shall cease to accrue after such Series C Redemption Date and all rights with respect to such shares shall forthwith after the Series C Redemption Date terminate, except only the right of the holders to receive the Series C Redemption Price without interest upon surrender of their certificate or certificates therefor.

(vii) Redeemed or Otherwise Acquired Shares. Any shares of Series C 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 Series C Preferred Stock following redemption.

(b) Series A Redemption.

(i) Redemption. All shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to 1.10 multiplied by the Series A Original Issue Price (the "*Series A Redemption Price*"), in three (3) equal annual installments commencing 90 days after receipt by the Corporation at any time on or after the redemption by the Corporation of all of the shares of Series C Preferred Stock, from the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of Series A Preferred Stock, of written notice (the "*Series A Redemption Request*") requesting

redemption of all shares of Series A Preferred Stock (the date of each such installment shall be referred to as a "*Series A Redemption Date*").

(ii) Notice to Series B Preferred Stockholders. At least 30, and no more than 60, days prior to delivering the Series A Redemption Request to the Corporation, the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of Series A Preferred Stock shall provide to each holder of Series B Preferred Stock, at its post office address last shown on the records of the Corporation, a copy of the Series A Redemption Request and the date such Series A Redemption Request shall be delivered to the Corporation (the "*Series A Redemption Request Delivery Date*"). Any determination by the holders of Series B Preferred Stock not to deliver a Series B Redemption Request (as defined below) to the Corporation on or before the Series A Redemption Request Delivery Date shall in no way affect their right to request redemption of their shares of Series B Preferred Stock under Section C.6(b).

(iii) Redemption Notice. After delivery of the Series A Redemption Request to the Corporation, written notice of the mandatory redemption (the "*Series A Redemption Notice*") shall be mailed, postage prepaid, to each holder of record of Series A Preferred Stock, at its post office address last shown on the records of the Corporation, not less than 40 days prior to each Series A Redemption Date. Each Series A Redemption Notice shall state:

(A) the number of shares of Series A Preferred Stock held by the holder that the Corporation shall redeem on the Series A Redemption Date specified in the Series A Redemption Notice;

(B) the Series A Redemption Date and the Series A Redemption Price;

(C) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section C.4(a)(iii)); and

(D) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

(iv) Series A Redemption Mechanics. 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 all shares of Series B Preferred Stock requested to be redeemed pursuant to a Series B Redemption Request (defined in Section C.6(b)(i) below), the Corporation shall redeem a pro rata portion of each Series A Preferred stock holder's redeemable shares (and the pro rata portion of each Series B Preferred Stock holder's redeemable shares, if applicable) out of funds legally

available therefor, based on the respective amounts which would otherwise be payable in respect of such 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.

(v) Surrender of Certificates; Payment. On or before the applicable Series A Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on such Series A Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section C.4 hereof, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series A Redemption Notice, and thereupon the Series A Redemption Price for such shares 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 Series A Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series A Preferred Stock shall promptly be issued to such holder.

(vi) Rights Subsequent to Redemption. If the Series A Redemption Notice shall have been duly given, and if on the applicable Series A Redemption Date the Series A Redemption Price payable upon redemption of the shares of Series A Preferred Stock to be redeemed on such Series A Redemption Date 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 Series A Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series A Preferred Stock shall cease to accrue after such Series A Redemption Date and all rights with respect to such shares shall forthwith after the Series A Redemption Date terminate, except only the right of the holders to receive the Series A Redemption Price without interest upon surrender of their certificate or certificates therefor.

(vii) Redeemed or Otherwise Acquired Shares. Any shares of Series A 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 Series A Preferred Stock following redemption.

(c) Series B Redemption.

(i) Redemption. All shares of Series B Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to 1.10 multiplied by the Series B Original Issue Price (the "*Series B Redemption Price*"), in three (3) equal annual installments commencing 90 days after receipt by the Corporation at any time on or after the redemption by the Corporation of all of the shares of Series C Preferred Stock, from the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of Series B Preferred Stock, of written notice (the "*Series B Redemption Request*") requesting redemption of all shares of Series B Preferred Stock (the date of each such installment shall be referred to as a "*Series B Redemption Date*").

(ii) Notice to Series A Preferred Stockholders. At least 30, and no more than 60, days prior to delivering the Series B Redemption Request to the Corporation, the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the then outstanding shares of Series B Preferred Stock shall provide to each holder of Series A Preferred Stock, at its post office address last shown on the records of the Corporation, a copy of the Series B Redemption Request and the date such Series B Redemption Request shall be delivered to the Corporation (the "*Series B Redemption Request Delivery Date*"). Any determination by the holders of Series A Preferred Stock not to deliver a Series A Redemption Request to the Corporation on or before the Series B Redemption Request Delivery Date shall in no way affect their right to request redemption of their shares of Series A Preferred Stock under Section C.6(a).

(iii) Redemption Notice. After delivery of the Series B Redemption Request to the Corporation, written notice of the mandatory redemption (the "*Series B Redemption Notice*") shall be mailed, postage prepaid, to each holder of record of Series B Preferred Stock, at its post office address last shown on the records of the Corporation, not less than 40 days prior to each Series B Redemption Date. Each Series B Redemption Notice shall state:

(A) the number of shares of Series B Preferred Stock held by the holder that the Corporation shall redeem on the Series B Redemption Date specified in the Series B Redemption Notice;

(B) the Series B Redemption Date and the Series B Redemption Price;

(C) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section C.4(a)(iii)); and

(D) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series B Preferred Stock to be redeemed.

(iv) Series B Redemption Mechanics. 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 all shares of Series A Preferred Stock requested to be redeemed pursuant to a Series A Redemption Request (defined in Section C.6(a)(i) above), the Corporation shall redeem a pro rata portion of each Series B Preferred stock holder's redeemable shares (and the pro rata portion of each Series A Preferred Stock holder's redeemable shares, if applicable) out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of such 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.

(v) Surrender of Certificates; Payment. On or before the applicable Series B Redemption Date, each holder of shares of Series B Preferred Stock to be redeemed on such Series B Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section C.4 hereof, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Series B Redemption Notice, and thereupon the Series B Redemption Price for such shares 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 Series B Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series B Preferred Stock shall promptly be issued to such holder.

(vi) Rights Subsequent to Redemption. If the Series B Redemption Notice shall have been duly given, and if on the applicable Series B Redemption Date the Series B Redemption Price payable upon redemption of the shares of Series B Preferred Stock to be redeemed on such Series B Redemption Date 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 Series B Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series B Preferred Stock shall cease to accrue after such Series B Redemption Date and all rights with respect to such shares shall forthwith after the Series B Redemption Date terminate, except only the right of the holders to receive the Series B Redemption Price without interest upon surrender of their certificate or certificates therefor.

(vii) Redeemed or Otherwise Acquired Shares. Any shares of Series B 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 Series B Preferred Stock following redemption.

7. Waiver. Any of the rights, powers or preferences of the holders of Series A Preferred Stock set forth herein may be waived by the affirmative consent or vote of the holders of at least a majority of shares of Series A Preferred Stock then outstanding. Any of the rights, powers or preferences of the holders of Series B Preferred Stock set forth herein may be waived by the affirmative consent or vote of the holders of at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the shares of Series B Preferred Stock then outstanding. Any of the rights, powers or preferences of the holders of Series C Preferred Stock set forth herein may be waived by the affirmative consent or vote of the holders of at least a majority of shares of Series C Preferred Stock then outstanding.

**FIFTH:** Subject to any additional vote required by this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

**SIXTH:** Subject to any additional vote required by this Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

**SEVENTH:** Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

**EIGHTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

**NINTH:** 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 General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth 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.

**TENTH:** To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Tenth shall not adversely affect any right or protection of any director, officer or other agent 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, officer or other agent occurring prior to, such amendment, repeal or modification.

**ELEVENTH:** Subject to any additional vote required by this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

That this Second Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 4<sup>th</sup> day of May, 2007.

By: 

Daniel Skovronsky, President