

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
BARONOVA, INC.

BAROnova, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), certifies that:

A. The name of the Corporation is BAROnova, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on March 16, 2006.

B. That this Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation's Certificate of Incorporation.

D. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, BAROnova, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Daniel R. Burnett, a duly authorized officer of the Corporation, on May 11, 2006.

/s/ Daniel R. Burnett

Daniel R. Burnett,
President & CEO

EXHIBIT A

ARTICLE I

The name of the corporation is BAROnova, Inc. (the “**Corporation**”).

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE III

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

ARTICLE IV

The Corporation is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock”. The total number of shares of stock that the Corporation shall have authority to issue is 12,833,334 shares, consisting of 8,500,000 shares of Common Stock, \$0.001 par value per share, and 4,333,334 shares of Preferred Stock, \$0.001 par value per share, all of which shall be designated “**Series A Preferred Stock**.”

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. **Definitions**. For purposes of this Article V, the following definitions shall apply:

- (a) “**Board**” means the Corporation’s Board of Directors.
- (b) “**Conversion Price**” means \$1.50 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).
- (c) “**Corporation**” means BAROnova, Inc.
- (d) “**Convertible Securities**” means any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.
- (e) “**Distribution**” means the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its

subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase at no greater than cost; (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in the Corporation's Right of First-Refusal and Co-Sale Agreement, as may be amended from time to time, or any other agreement unanimously approved by the Board; and (iii) any other repurchase or redemption of capital stock of the Corporation approved by holders of a majority of the then outstanding shares of Common Stock of the Corporation and a majority of the then outstanding shares of Preferred Stock of the Corporation, voting as a single class on an as-converted to Common Stock basis.

(f) **"Dividend Rate"** means an annual rate of 8% of the Original Issue Price of the Series A Preferred Stock per share for the Series A Preferred Stock.

(g) **"Liquidation Preference"** means the Original Issue Price.

(h) **"Maintenance Right"** means for each Qualified Holder (as defined in Article IV, Section 4(d)(v)), such number of shares of Series A Preferred Stock as provided in the "Number of Series A Shares" column of the "Second Closing" of the Schedule of Investors attached to the Series A Preferred Stock Purchase Agreement as Exhibit A, such securities to be on the same terms and conditions as set forth in the Series A Preferred Stock Purchase Agreement.

(i) **"Options"** means rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(j) **"Original Issue Price"** means \$1.50 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations and as set forth elsewhere herein).

(k) **"Preferred Stock"** means the Series A Preferred Stock.

(l) **"Qualified Affiliates"** means any affiliate of a holder of Preferred Stock to which such holder may have assigned its Maintenance Right, including affiliated funds which are not Corporation shareholders at the time of a Qualified Financing.

(m) **"Qualified Financing"** means the equity financing in which holders of Preferred Stock have been offered the Maintenance Right.

(n) **"Recapitalization"** means any stock dividend, stock split, combination of shares, reverse stock split, reorganization, recapitalization, or other reclassification affecting the Corporation's equity securities

(o) **"Restated Certificate"** means this Amended and Restated Certificate of Incorporation

(p) “Series A Preferred Stock Purchase Agreement” means the Series A Preferred Stock Purchase Agreement by and among the Corporation and the Qualified Holders to be entered into on or about the date hereof.

2. Dividends.

(a) Preferred Stock. In any calendar year, the holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when and as declared by the Board, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock until all declared dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders. Payment of any dividends to the holders of the Preferred Stock shall be on a pro-rata, pari passu basis in proportion to the Dividend Rates for each series of Preferred Stock. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to such dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year.

(b) Additional Dividends. After the payment or setting aside for payment of the dividends or described in Section 2(a), any additional dividends (other than dividends on Common Stock payable solely in Common Stock) declared or paid in any fiscal year shall be declared or paid among the holders of the Preferred Stock and Common Stock then outstanding in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted at the then-effective Conversion Rate (as defined in Section 4 hereof).

(c) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board.

(d) Consent to Certain Distributions. As authorized by Section 402.5(c) of the California Corporations Code, Sections 502 and 503 of the California Corporations Code shall not apply with respect to payments made by the Corporation in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase at no greater than cost; (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in the Corporation’s Right of First-Refusal and Co-Sale Agreement, as may be amended from time to time, or any other agreement unanimously approved by the Board; or (iii) any other repurchase or redemption of capital stock of the Corporation approved by the Board and the holders of 65% of the then outstanding shares of the Series A Preferred Stock voting as a separate class.

3. Liquidation Rights.

(a) Series A Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A Preferred Stock held by them equal to the sum of (i) the Liquidation Preference for the Series A Preferred Stock and (ii) all declared and unpaid dividends on such share of Series A Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for Distribution to the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for Distribution shall be distributed with equal priority and pro rata among the holders of the Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Remaining Assets. After the payment or setting aside for payment to the holders of Preferred Stock of the full amounts specified in Section 3(a) above, the entire remaining assets of the Corporation legally available for Distribution shall be distributed *pro rata* among the holders of Common Stock in proportion to the number of shares of Common Stock held by them.

(c) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Notwithstanding paragraphs (a) and (b) above, solely for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each series of Preferred Stock shall be treated as if all holders of such series had converted such holder's shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion of any series of Preferred Stock (including taking into account the operation of this paragraph (c) with respect to all series of Preferred Stock), holders of such series would receive (with respect to such series), in the aggregate, an amount greater than the amount that would be distributed to holders of such series if such holders had not converted such series of Preferred Stock into shares of Common Stock. If holders of any series are treated as if they had converted shares of Preferred Stock into Common Stock pursuant to this paragraph, or if holders of any series voluntarily convert their shares of Preferred Stock into Common Stock pursuant to the terms of ARTICLE V, Section 4(a) hereof, then shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(d) Reorganization. For purposes of this Section 3, unless otherwise agreed by holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class and on an as-converted to Common Stock basis, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (a) the acquisition of the Corporation or a majority of the Corporation's

outstanding shares of capital stock entitled to vote by another entity or person by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding by means of the sale of capital stock of the Company for capital raising purposes) other than a transaction or series of transactions (i) effected exclusively to change the domicile of the Corporation, (ii) that merges or consolidates the Corporation with or into a wholly-owned subsidiary of the Corporation, or (iii) in which the holders of the voting securities of the Corporation outstanding immediately before such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity), on account of shares in the Corporation held by such holders immediately before such transaction, at least a majority of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions (an “**Acquisition**”); or (b) a sale or other conveyance of all or substantially all of the assets of the Corporation (an “**Asset Transfer**”).

(e) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board (including at least one member elected by the holders of the Series A Preferred stock voting as a class), except that unless otherwise valued in a merger or acquisition agreement approved by the Corporation's stockholders (in which case such value shall be controlling) any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) trading day period ending three (3) trading days before the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the thirty (30) trading day period ending three (3) trading days before the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this Section 3(e), “trading day” means any day which the exchange or system on which the securities to be distributed are traded is open and “closing prices” or “closing bid prices” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is

generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(f) In the event of a deemed liquidation, dissolution or winding up of the Corporation as described in Section 3(d) above, each holder of Preferred Stock shall be entitled to receive at the closing (and at each date after the closing on which additional amounts (such as earnout payments, escrow amounts or other contingent payments) are paid to stockholders of the Company as a result of the transaction) in cash, securities or other property (valued as provided in Section 3(e) above) an amount equal to the greater of: (1) the amount specified in Sections 3(a); or (2) the amount that the holders of Preferred Stock would have been entitled to receive had they converted their shares of Preferred Stock into Common Stock immediately before such event at the then effective conversion price (taking into account all amounts previously paid to such holder under this Section 3).

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series of Preferred Stock by the Conversion Price for such series of Preferred Stock, calculated to the nearest one-hundredth of a share. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the “Conversion Rate” for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, nonassessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately before the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “Securities Act”), covering the offer and sale of the Corporation’s Common Stock at a price per share of at least \$7.50 (as adjusted for Recapitalizations) and with aggregate net proceeds to the Corporation of at least \$30,000,000 (before deduction of underwriters’ commissions and expenses) (the “Qualified IPO”) or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of at least 65% of the Preferred Stock then outstanding, or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an “Automatic Conversion Event”).

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, they shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that they elect to convert the same; provided, however, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately before the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale or liquidation of the Corporation, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing

of such transaction, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately before the closing of such transaction.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this Section 4(d), **“Additional Shares of Common”** means all shares of Common Stock issued (or, pursuant to Section 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Restated Certificate, other than:

(1) shares of Common Stock or other securities issuable upon the conversion of any of the Preferred Stock or as a dividend or Distribution on the Preferred Stock;

(2) shares of Common Stock or other securities issuable upon the conversion of any debenture, warrant, Option, or other Convertible Security outstanding as of the date of the first issuance of Series A Preferred Stock;

(3) shares of Common Stock issuable upon a stock split, stock dividend, or any subdivision of shares of Common Stock;

(4) shares of Common Stock (or options to purchase such shares of Common Stock) issued or issuable to directors, officers, employees, and consultants and advisors pursuant to plans approved by the Board including the Series A directors, provided that such issuances are in each case approved by the Board including at least one of the Series A directors;

(5) shares of Common Stock issued or issuable in connection with equipment leasing, real estate, bank financing, or similar transactions, provided, that such issuances are in each case approved by the Board including at least one of the Series A directors;

(6) shares of Common Stock issued in a Qualified IPO;

(7) shares of Common Stock issued or issuable in connection with the Company's strategic alliances, joint ventures, and other similar agreements, provided, that such issuances are in each case approved by the Board including at least one of the Series A directors;

(8) shares of Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are in each case approved by the Board including at least one of the Series A directors;

(9) shares of Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation in each case approved by the Board including at least one of the Series A directors; and

(10) shares of Common Stock which are otherwise excluded by the affirmative vote or consent of the holders of 65% of the shares of Preferred Stock of the Company then outstanding.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to Section 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately before such issue, for such series of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the date of the first issuance of Series A Preferred Stock, shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

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

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than pursuant to Recapitalization provisions of such Options or Convertible Securities such as those set forth in Sections 4(e), 4(f), 4(g) and 4(h) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of

Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately before such issue, then, the Conversion Price of the affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of

Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01. For the purposes of this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) Pay to Play.

(1) In the event that a holder of Preferred stock (a "Qualified Holder"), together with its Qualified Affiliates, does not purchase the number of shares in the Qualified Financing allocated to the Qualified Holder pursuant to its Maintenance Right, then each share of Series A Preferred Stock held by the Qualified Holder will automatically, without any further action of the Qualified Holder or the Corporation, be converted into fully paid, non assessable shares of Common Stock at the then effective Conversion Rate for such share immediately before the closing of such a Qualified Financing.

(2) Any conversion implemented as a result of the provisions contained in Section 4(d)(v)(1) shall be effective immediately before the closing of a Qualified Financing contemplated in Section 4(d)(v)(1).

(vi) Determination of Consideration. For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation after deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance:

(b) 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; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board.

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

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

(y) the maximum number of shares of Common Stock as set forth in the instruments relating thereto then, issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately before such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately before such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately before such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately before such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustment for Common Stock Dividends and Distributions. If the Corporation, at any time or from time to time after the date of filing of this Restated Certificate, makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in shares of Common Stock, in each such event the Conversion Price then in effect for each series of Preferred Stock shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect for such series of Preferred Stock by a fraction (i) the numerator of

which is the total number of shares of Common Stock issued and outstanding immediately before the time of such issues or the close of business on such record date and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately before the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for each series of Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(g) to reflect the actual payment of such dividend or distribution.

(h) Adjustments for Merger, Reclassification, Exchange and Substitution. Subject to Section 3 above, if at any time or from time to time, the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by merger, consolidation, recapitalization, capital reorganization, reclassification or otherwise (other than a subdivision, combination of shares or merger or sale of assets provided for above or in Section 3), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such merger, reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares. In addition, to the extent applicable in any such merger, consolidation, reorganization, recapitalization, or reclassification, or other transaction subject to this Section 4(h), provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such merger, consolidation, reorganization, recapitalization, or reclassification, or other transaction subject to this Section 4(h).

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(j) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either generally or in a particular instance, by the consent or vote of the holders of at least a majority of the then outstanding shares of such series. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, the Corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution, and the amount and character of such dividend or distribution.

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

5. Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) No Series Voting. Other than as provided herein or required by law, there shall be no series voting.

(c) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted immediately after the close of business on the record date fixed for a stockholders meeting or the effective date of a written consent. The holders of shares of Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote and may act by written consent in the same manner as the Common Stock. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(d) Election of Directors. The holders of Common Stock, voting as a separate class either by written consent or at a special meeting, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the stockholders and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director. The holders of Series A Preferred Stock, voting as a separate class either by written consent or at a special meeting, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the stockholders and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director (the "Series A Directors"). The holders of Common Stock and Preferred Stock, voting as a separate class either by written consent or at a special meeting, shall be entitled to any and all remaining members of the Board at each meeting or pursuant to each consent of the stockholders and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(e) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then 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.

(f) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

6. Amendments and Changes. As long as at least 200,000 of the shares of Preferred Stock (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits and the like) shall be issued and outstanding, the Corporation shall not, either directly or by amendment, merger, consolidation, or otherwise, without first obtaining the approval (by vote or written consent as provided by law) of the holders of at least 65% of the Preferred Stock then outstanding:

(a) amend, alter, waive or repeal any provision of this Restated Certificate or Bylaws of the Corporation;

(b) alter, change, or amend the preferences, rights, or privileges of the Series A Preferred Stock;

(c) increase or decrease the total number of authorized shares of Common Stock or the Series A Preferred Stock;

(d) authorize or create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges senior to or on a parity with any series of Preferred Stock or having voting rights other than those granted to the Preferred Stock generally;

(e) take any action that results in the redemption of any shares of Common Stock (other than pursuant to equity incentive agreements with employees,

officers, consultants, or advisers of the Corporation approved by the Board giving the Corporation the right to repurchase shares upon the termination of services);

(f) authorize an Acquisition or Asset Transfer; or

(g) increase or decrease the authorized size of the Board.

7. Notices. Any notice or other communication required by the provisions of this Article V to be given to the holders of Preferred Stock shall be deemed given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being delivered by facsimile or by email (with receipt of appropriate confirmation), (iv) one business day after being deposited with an overnight courier service or (v) four days after being deposited in the United States mail, First Class with postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

8. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation shall so provide.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE VIII

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

2. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

3. Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of this Restated Certificate inconsistent with this Article VIII, shall eliminate or reduce the effect of this Article VIII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VIII, would accrue or arise, before such amendment, repeal or adoption of an inconsistent provision.

ARTICLE IX

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