

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AVIGENICS, INC.**

AviGenics, inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify that:

FIRST. The original Certificate of Incorporation was filed with the Secretary of State of Delaware on February 5, 1996 and was amended and restated on June 10, 1996, November 17, 1997, October 5, 1998, August 4, 2000, April 20, 2004, March 1, 2005, June 20, 2005 and July 19, 2005.

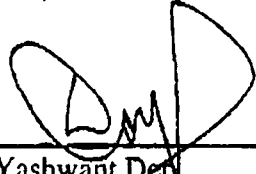
SECOND. The Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 242, 245 and 228 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation, and prompt written notice was duly given pursuant to Section 228 to those stockholders who did not approve the Amended and Restated Certificate of Incorporation by written consent.

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

IN WITNESS WHEREOF, AviGenics, inc., has caused this Certificate to be signed by the President and Chief Executive Officer this 28th day of September, 2007.

AviGenics, inc.

By:



Yashwant Desai
Chief Executive Officer

EXHIBIT A
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AVIGENICS, INC.

FIRST. The name of the Corporation is AviGenics, inc.

SECOND. The address of the registered office of the Corporation in the State of Delaware is 615 S. Dupont Highway, City of Dover, County of Kent 19901. The name of its registered agent at such address is National Corporate Research, Ltd.

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 of the State of Delaware.

FOURTH.

A. The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is Fifty-One Million Nine Hundred Forty-Eight Thousand Eight Hundred Four (51,948,804) shares, comprised of Thirty Million (30,000,000) shares of Common Stock with a par value of \$0.001 per share (the "*Common Stock*") and Twenty-One Million Nine Hundred Forty-Eight Thousand Eight Hundred Four (21,948,804) shares of Preferred Stock with a par value of \$0.001 per share (the "*Preferred Stock*"). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if-converted basis). In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

B. The Preferred Stock shall be divided into series. One Hundred Four Thousand Four Hundred Eighty-Six (104,486) shares (subject to reduction as set forth hereafter in this paragraph) shall be designated "*Series A-1 Preferred Stock*," Four Hundred Thirty-Four Thousand Five Hundred Four (434,504) shares (subject to reduction as set forth hereafter in this paragraph) shall be designated "*Series B-1 Preferred Stock*", Four Million Seven Hundred Fifty Thousand Two Hundred Twenty-Two (4,750,222) shares (subject to reduction as set forth hereafter in this paragraph) shall be designated "*Series C-1 Preferred Stock*", Nine Million One Hundred Twenty-Two Thousand Five

Hundred Eleven (9,122,511) shares (subject to reduction as set forth hereafter in this paragraph) shall be designated "**Series D-1 Preferred Stock**" and Seven Million Five Hundred Thirty-Seven Thousand Eighty-One (7,537,081) shares (subject to reduction as set forth hereafter in this paragraph) shall be designated "**Series E-1 Preferred Stock**". Subject to the provisions of Section 6(a) of Article Fifth below, the remaining shares of Preferred Stock may be issued from time to time in one or more series. Subject to the provisions of Section 6(a) of Article Fifth below, the Board of Directors of the Corporation (the "**Board of Directors**") is expressly authorized, subject to the provisions of this Amended and Restated Certificate of Incorporation, to provide for the issue of all or any of the remaining shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares and as may be permitted by the General Corporation Law of the State of Delaware. The Board of Directors is also expressly authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series other than the Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock and Series E-1 Preferred Stock subsequent to the issue of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. Notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law and subject to Section 6 below, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding or reserved upon conversion or exercise of outstanding options or warrants) by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock and Preferred Stock of the Corporation, voting together as a single class, with each such share being entitled to such number of votes per share as is provided in Section 4(a) and Section 6 of Article Fifth.

FIFTH. The relative rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes of the shares or the holders thereof are as set forth below. As used in this Article Fifth, the term "**Preferred Stock**," without designation, shall refer to shares of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock and Series E-1 Preferred Stock.

1. Dividend Preference.

(a) The holders of Series E-1 Preferred Stock shall be entitled to receive, out of funds legally available therefore, dividends on each outstanding share of Series E-1 Preferred Stock at an annual rate of \$0.243192 (as adjusted for stock splits, combinations and similar events after the date of filing of this Amended and Restated Certificate of Incorporation (the "**Filing Date**")) for each share held by them, payable when and as declared by the Board of Directors, in preference and priority to the payment of dividends on any shares of Common Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock and Series D-1 Preferred Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated employees, officers, directors, or consultants pursuant to contractual arrangements). The right to such dividends shall be cumulative, and shall accrue to holders of Series E-1 Preferred Stock only if such dividends are declared but not paid in any prior year; *provided, however*, that (i) for purposes of calculating the "**Series E-1 Preference**" pursuant to Section 2(a)(ii) of this Article Fifth and for purposes of calculating the "**Series E-1 Dividend Shares**" pursuant to this Section 1(a) of this Article Fifth, dividends shall automatically accrue from day to day (computed on the basis of the actual number of days elapsed) from the date any shares of Series E-1 Preferred Stock are first issued (the "**Series E-1 Dividend Accrual Date**") on the Series E-1 Preferred Stock whether or not dividends are declared on the Series E-1 Preferred Stock by the Board of Directors. No dividend may be declared or paid in respect of any other class or series of stock unless dividends are first declared in full on all outstanding shares of Series E-1 Preferred Stock as determined from the Series E-1 Dividend Accrual Date. Any accumulation of dividends on the Series E-1 Preferred Stock shall not bear interest. Dividends, if paid, or if declared and set apart for payment, must be paid on, or declared and set apart for payment on, all outstanding shares of Series E-1 Preferred Stock contemporaneously. In the event that the Corporation shall have accrued (whether or not declared) but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series E-1 Preferred Stock (as provided in Section 5 hereof) or a deemed conversion of Series E-1 Preferred Stock for purposes of calculating the amount payable to the holders of Series E-1 Preferred Stock in a Liquidation Event (as provided in Section 2(h) hereof), the Corporation shall, at the option of each holder and on a *pari passu* basis, either (i) pay in cash to the holder(s) of Series E-1 Preferred Stock subject to conversion the full amount of any such dividends, or (ii) allow all accrued dividends on the Series E-1 Preferred Stock to be paid in the number of shares of Series E-1 Preferred Stock determined as provided below and converted into Common Stock in accordance with, and pursuant to the terms specified in Sections 5(a),(b) and (c) hereof with respect to the holders of Series E-1 Preferred Stock (the "**Series E-1 Dividend Shares**"). In the event that the Corporation shall have accrued (whether or not declared) but unpaid dividends outstanding immediately prior to, and in the event of, a Liquidation Event, for purposes of calculating the amount payable to the holders of Series E-1 Preferred Stock in a Liquidation Event as provided in Section 2(a)(ii) hereof, the Corporation shall, at the

option of each holder and on a pari passu basis, either (i) pay in cash to the holder(s) of Series E-1 Preferred Stock the full amount of any such dividends, or (ii) allow all accrued dividends on the Series E-1 Preferred Stock to be paid in Series E-1 Dividend Shares. The number of Series E-1 Dividend Shares issuable to each holder of Series E-1 Preferred Stock shall be determined by dividing all accumulated but unpaid dividends on such holder's shares of Series E-1 Preferred Stock by \$3.0399 (as adjusted for stock splits, combinations and similar events after the Filing Date); provided, that for purposes of calculating the Series E-1 Dividend Shares, dividends shall accumulate only through, and the Corporation shall have no obligation to pay dividends on the Series E-1 Preferred Stock in cash after, the earlier of (i) the close of business on the day the certificates representing the Series E-1 Preferred Stock are surrendered to the Corporation for conversion, or (ii) the last day of the fiscal quarter immediately preceding the fiscal quarter in which the Corporation first files a registration statement in connection with a public offering that upon the closing of the issuance of shares thereunder causes an "**Automatic Conversion**" of the Series E-1 Preferred Stock pursuant to Section 5(b) of this Article Fifth.

(b) The holders of Series D-1 Preferred Stock and Series C-1 Preferred Stock shall be entitled to receive, on a pari passu basis, out of funds legally available therefore, (i) dividends on each outstanding share of Series D-1 Preferred Stock at an annual rate of \$0.1227736 (as adjusted for stock splits, combinations and similar events after the Filing Date) and (ii) dividends on each outstanding share of Series C-1 Preferred Stock at an annual rate of \$0.119456 (as adjusted for stock splits, combinations and similar events after the Filing Date) for each share held by them, payable when and as declared by the Board of Directors, in preference and priority to the payment of dividends on any shares of Common Stock, Series A-1 Preferred Stock and Series B-1 Preferred Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated employees, officers, directors, or consultants pursuant to contractual arrangements). The right to such dividends shall be cumulative, and shall accrue to holders of Series D-1 Preferred Stock and Series C-1 Preferred Stock only if such dividends are declared but not paid in any prior year; *provided, however*, that (i) for purposes of calculating the "**Series D-1 Preference**" pursuant to Section 2(b)(i)(y) of this Article Fifth and for purposes of calculating the "**Series D-1 Dividend Shares**" pursuant to this Section 1(b) of this Article Fifth, dividends shall automatically accrue from day to day (computed on the basis of the actual number of days elapsed) from the date any shares of Series D-1 Preferred Stock are first issued (the "**Series D-1 Dividend Accrual Date**") on the Series D-1 Preferred Stock whether or not dividends are declared on the Series D-1 Preferred Stock by the Board of Directors, and (ii) for purposes of calculating the "**Series C-1 Preference**" pursuant to Section 2(b)(ii)(y) of this Article Fifth and for purposes of calculating the "**Series C-1 Dividend Shares**" pursuant to this Section 1(b) of this Article Fifth, dividends shall automatically accrue from day to day (computed on the

basis of the actual number of days elapsed) from the date any shares of Series C-1 Preferred Stock are first issued (the "***Series C-1 Dividend Accrual Date***") on the Series C-1 Preferred Stock whether or not dividends are declared on the Series C-1 Preferred Stock by the Board of Directors. No dividend may be declared or paid in respect of Series B-1 Preferred Stock, Series A-1 Preferred Stock and Common Stock unless dividends are first declared in full on (i) all outstanding shares of Series D-1 Preferred Stock as determined from the Series D-1 Dividend Accrual Date, and (ii) all outstanding shares of Series C-1 Preferred Stock as determined from the Series C-1 Dividend Accrual Date. Any accumulation of dividends on the Series D-1 Preferred Stock and the Series C-1 Preferred Stock shall not bear interest. Dividends, if paid, or if declared and set apart for payment, must be paid on, or declared and set apart for payment on, all outstanding shares of Series D-1 Preferred Stock and Series C-1 Preferred Stock contemporaneously. In the event that the Corporation shall have accrued (whether or not declared) but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series D-1 Preferred Stock or Series C-1 Preferred Stock (as provided in Section 5 hereof) or a deemed conversion of Series D-1 Preferred Stock or Series C-1 Preferred Stock for purposes of calculating the amount payable to the holders of Series D-1 Preferred Stock or Series C-1 Preferred Stock in a Liquidation Event (as provided in Section 2(h) hereof), the Corporation shall, at the option of each holder and on a pari passu basis, either (i) pay in cash to the holder(s) of Series D-1 Preferred Stock and Series C-1 Preferred Stock subject to conversion the full amount of any such dividends, or (ii) (x) allow all accrued dividends on the Series D-1 Preferred Stock to be paid in the number of shares of Series D-1 Preferred Stock determined as provided below and converted into Common Stock in accordance with, and pursuant to the terms specified in Sections 5(a),(b) and (c) hereof with respect to the holders of Series D-1 Preferred Stock (the "***Series D-1 Dividend Shares***") and (y) allow all accrued dividends on the Series C-1 Preferred Stock to be paid in the number of shares of Series C-1 Preferred Stock determined as provided below and converted into Common Stock in accordance with, and pursuant to the terms specified in Sections 5(a),(b) and (c) hereof with respect to the holders of Series C-1 Preferred Stock (the "***Series C-1 Dividend Shares***"). In the event that the Corporation shall have accrued (whether or not declared) but unpaid dividends outstanding immediately prior to, and in the event of, a Liquidation Event, for purposes of calculating (i) the amount payable to the holders of Series D-1 Preferred Stock in a Liquidation Event as provided in Section 2(b)(i)(y) hereof, the Corporation shall, at the option of each holder and on a pari passu basis, either (a) pay in cash to the holder(s) of Series D-1 Preferred Stock the full amount of any such dividends, or (b) allow all accrued dividends on the Series D-1 Preferred Stock to be paid in Series D-1 Dividend Shares, and (ii) the amount payable to the holders of Series C-1 Preferred Stock in a Liquidation Event as provided in Section 2(b)(ii)(y) hereof, the Corporation shall, at the option of each holder and on a pari passu basis, either (a) pay in cash to the holder(s) of Series C-1 Preferred Stock the full amount of any such dividends, or (b) allow all accrued dividends on the Series C-1 Preferred Stock to be paid

in Series C-1 Dividend Shares. The number of Series D-1 Dividend Shares issuable to each holder of Series D-1 Preferred Stock shall be determined by dividing all accumulated but unpaid dividends on such holder's shares of Series D-1 Preferred Stock by \$1.53467 (as adjusted for stock splits, combinations and similar events after the Filing Date); provided, that for purposes of calculating the Series D-1 Dividend Shares, dividends shall accumulate only through, and the Corporation shall have no obligation to pay dividends on the Series D-1 Preferred Stock in cash after, the earlier of (i) the close of business on the day the certificates representing the Series D-1 Preferred Stock are surrendered to the Corporation for conversion, or (ii) the last day of the fiscal quarter immediately preceding the fiscal quarter in which the Corporation first files a registration statement in connection with a public offering that upon the closing of the issuance of shares thereunder causes an "***Automatic Conversion***" of the Series D-1 Preferred Stock pursuant to Section 5(b) of this Article Fifth. The number of Series C-1 Dividend Shares issuable to each holder of Series C-1 Preferred Stock shall be determined by dividing all accumulated but unpaid dividends on such holder's shares of Series C-1 Preferred Stock by \$1.4932 (as adjusted for stock splits, combinations and similar events after the Filing Date); provided, that for purposes of calculating the Series C-1 Dividend Shares, dividends shall accumulate only through, and the Corporation shall have no obligation to pay dividends on the Series C-1 Preferred Stock in cash after, the earlier of (i) the close of business on the day the certificates representing the Series C-1 Preferred Stock are surrendered to the Corporation for conversion, or (ii) the last day of the fiscal quarter immediately preceding the fiscal quarter in which the Corporation first files a registration statement in connection with a public offering that upon the closing of the issuance of shares thereunder causes an "***Automatic Conversion***" of the Series C-1 Preferred Stock pursuant to Section 5(b) of this Article Fifth.

(c) The holders of Series B-1 Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends on each outstanding share of Series B-1 Preferred Stock at an annual rate of \$1.8448 (as adjusted for stock splits, combinations and similar events after the Filing Date) for each share held by them, payable when and as declared by the Board of Directors, in preference and priority to the payment of dividends on any shares of Common Stock and Series A-1 Preferred Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated employees, officers, directors, or consultants pursuant to contractual arrangements). The right to such dividends shall be cumulative, and shall accrue to holders of Series B-1 Preferred Stock only if such dividends are declared but not paid in any prior year; *provided, however*, that for purposes of calculating the "***Series B-1 Preference***" pursuant to Section 2(c) of this Article Fifth and for purposes of calculating the "***Series B-1 Dividend Shares***" pursuant to this Section 1(b) of this Article Fifth, dividends shall automatically accrue from day to day (computed on the basis of the actual number of days elapsed) from August 4, 2000 (the "***Series B-1 Dividend Accrual Date***")

on the Series B-1 Preferred Stock whether or not dividends are declared on the Series B-1 Preferred Stock by the Board of Directors. No dividend may be declared or paid in respect of any other class or series of stock (other than the Series D-1 Preferred Stock and Series C-1 Preferred Stock) unless dividends are first declared in full on all outstanding shares of Series B-1 Preferred Stock as determined from the Series B-1 Dividend Accrual Date. Any accumulation of dividends on the Series B-1 Preferred Stock shall not bear interest. Dividends, if paid, or if declared and set apart for payment, must be paid on, or declared and set apart for payment on, all outstanding Series B-1 Preferred Stock contemporaneously. In the event that the Corporation shall have accrued (whether or not declared) but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series B-1 Preferred Stock (as provided in Section 5 hereof) or a deemed conversion of Series B-1 Preferred Stock for purposes of calculating the amount payable to the holders of Series B-1 Preferred Stock in a Liquidation Event (as provided in Section 2(h) hereof), the Corporation shall, at the option of each holder either (i) pay in cash to the holder(s) of Series B-1 Preferred Stock subject to conversion the full amount of any such dividends, or (ii) allow all accrued dividends on the Series B-1 Preferred Stock to be paid in the number of shares of Series B-1 Preferred Stock determined as provided below and converted into Common Stock in accordance with, and pursuant to the terms specified in Sections 5(a),(b) and (c) hereof (the "*Series B-1 Dividend Shares*"). In the event that the Corporation shall have accrued (whether or not declared) but unpaid dividends outstanding immediately prior to, and in the event of, a Liquidation Event, for purposes of calculating the amount payable to the holders of Series B-1 Preferred Stock in a Liquidation Event as provided in Section 2(c) hereof, the Corporation shall, at the option of each holder and on a pari passu basis, either (i) pay in cash to the holder(s) of Series B-1 Preferred Stock the full amount of any such dividends, or (ii) allow all accrued dividends on the Series B-1 Preferred Stock to be paid in Series B-1 Dividend Shares. The number of Series B-1 Dividend Shares issuable to each holder of Series B-1 Preferred Stock shall be determined by dividing all accumulated but unpaid dividends on such holder's shares of Series B-1 Preferred Stock by \$23.0601 (as adjusted for stock splits, combinations and similar events after the Filing Date); provided, that for purposes of calculating the Series B-1 Dividend Shares, dividends shall accumulate only through, and the Corporation shall have no obligation to pay dividends on the Series B-1 Preferred Stock in cash after, the earlier of (i) the close of business on the day the certificates representing the Series B-1 Preferred Stock are surrendered to the Corporation for conversion, or (ii) the last day of the fiscal quarter immediately preceding the fiscal quarter in which the Corporation first files a registration statement in connection with a public offering that upon the closing of the issuance of shares thereunder causes an "*Automatic Conversion*" of the Series B-1 Preferred Stock pursuant to Section 5(b) of this Article Fifth.

(d) The holders of Series A-1 Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends on each outstanding share of Series A-1 Preferred Stock at an annual rate of \$1.845 (as adjusted for stock splits, combinations and similar events after the Filing Date) for each share held by them, payable when and as declared by the Board of Directors, in preference and priority to the payment of dividends on any shares of Common Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated employees, officers, directors, or consultants pursuant to contractual arrangements). The right to such dividends shall not be cumulative, and no right shall accrue to the holder of Series A-1 Preferred Stock by reason of the fact that dividends on such shares are not declared or paid in any prior year. Dividends, if paid, or if declared and set apart for payment, must be paid on, or declared and set apart for payment on, all outstanding Series A-1 Preferred Stock contemporaneously. No shares of Common Stock shall receive any dividend at a rate which is greater than the rate at which dividends are simultaneously paid in respect of the Series A-1 Preferred Stock (based on the number of shares of Common Stock into which the Series A-1 Preferred Stock is convertible on the date of dividend). In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series A-1 Preferred Stock (as provided in Section 5 hereof), the Corporation shall, at the option of the holder(s), (i) pay in cash to the holder(s) of Series A-1 Preferred Stock subject to conversion the full amount of any such dividends or (ii) allow dividends on the Series A-1 Preferred Stock to be paid in shares of Series A-1 Preferred Stock to be converted into Common Stock in accordance with, and pursuant to the terms specified in Section 5 hereof.

(e) If this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets excluding cash dividends or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case, the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution. No such distributions, however, shall be paid on the Common Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock or Series D-1 Preferred Stock until the holders of Series E-1 Preferred Stock have first received all accrued (whether or not declared) but unpaid dividends at the rates specified in paragraph 1(a) above, no such distributions shall be paid on the Common Stock, Series A-1 Preferred Stock or Series B-1 Preferred Stock until the holders of Series D-1 Preferred Stock and Series C-1 Preferred Stock have first received all accrued (whether or not declared) but unpaid dividends at the rates specified in paragraph 1(b) above, no such distributions shall be paid on the Common Stock or Series

A-1 Preferred Stock until the holders of Series B-1 Preferred Stock have first received all accrued (whether or not declared) but unpaid dividends at the rates specified in paragraph 1(c) above, and no such distributions shall be paid on the Common Stock until the holders of the Series A-1 Preferred Stock have first received all declared but unpaid dividends at the rates specified in paragraph 1(d) above.

(f) After payment of such Preferred Stock dividends, any additional dividends or distributions (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated employees, officers, directors, or consultants pursuant to contractual arrangements) shall be distributed among the holders of Series E-1 Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series B-1 Preferred Stock, Series A-1 Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

(g) Cash dividends shall be paid by forwarding a check, postage prepaid, to the address of each holder (or, in the case of joint holders, to the address of any such holder) of Preferred Stock as shown on the books of the Corporation, or to such other address as such holder specifies for such purpose by written notice to the Corporation. The forwarding of such check shall satisfy all obligations of the Corporation with respect to such cash dividends, unless such check is not paid upon timely presentation.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution, or winding up of the Corporation (a "***Liquidation Event***"), whether voluntary or not, subject to section 2(h) below, the holders of Series E-1 Preferred Stock shall be entitled to receive, before any amount shall be paid to holders of Common Stock or any other series of Preferred Stock, an amount per share equal to the greater of (i) \$6.0798 (as adjusted for stock splits, combinations or similar events after the Filing Date) and (ii) \$3.0399 (as adjusted for stock splits, combinations or similar events after the Filing Date) and all accrued (whether or not declared) but unpaid dividends with respect to such shares of Series E-1 Preferred Stock, (the "***Series E-1 Preference***"). Payment of the Series E-1 Preference shall be made to the holders of Series E-1 Preferred Stock before any distribution shall be made in respect of the Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series B-1 Preferred Stock, Series A-1 Preferred Stock or Common Stock. If, upon the occurrence of any such Liquidation Event, the assets and surplus funds distributed among the holders of Series E-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the remaining assets and surplus funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series E-1 Preferred Stock.

(b) In the event of any Liquidation Event, whether voluntary or not, subject to section 2(h) below, the holders of Series D-1 Preferred Stock and Series C-1 Preferred Stock shall be entitled to receive, on a pari passu basis, before any amount shall be paid to holders of Common Stock, Series A-1 Preferred Stock or Series B-1 Preferred Stock, an amount per share equal to (i) with respect to such shares of Series D-1 Preferred Stock, the greater of (x) \$3.06934 (as adjusted for stock splits, combinations or similar events after the Filing Date) and (y) \$1.53467 (as adjusted for stock splits, combinations or similar events after the Filing Date) and all accrued (whether or not declared) but unpaid dividends with respect to such shares of Series D-1 Preferred Stock (the “*Series D-1 Preference*”), and (ii) with respect to such shares of Series C-1 Preferred Stock, the greater of (x) \$2.9864 (as adjusted for stock splits, combinations or similar events after the Filing Date), and (y) \$1.4932 (as adjusted for stock splits, combinations or similar events after the Filing Date) and all accrued (whether or not declared) but unpaid dividends with respect to such shares of Series C-1 Preferred Stock (the “*Series C-1 Preference*”). Payment of the Series D-1 Preference and the Series C-1 Preference shall be made to the holders of Series D-1 Preferred Stock and Series C-1 Preferred Stock on a pari passu basis before any distribution shall be made in respect of the Series B-1 Preferred Stock, Series A-1 Preferred Stock or Common Stock. After complete payment to the holders of Series E-1 Preferred Stock, if the remaining assets and surplus funds distributed among the holders of Series D-1 Preferred Stock and Series C-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the remaining assets and surplus funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series D-1 Preferred Stock and Series C-1 Preferred Stock.

(c) In the event of any Liquidation Event, whether voluntary or not, subject to Section 2(h) below, the holders of Series B-1 Preferred Stock shall be entitled to receive, before any amount shall be paid to holders of Common Stock or Series A-1 Preferred Stock, an amount per share equal to \$23.0601 (as adjusted for stock splits, combinations or similar events after the Filing Date) and all accrued (whether or not declared) but unpaid dividends with respect to such shares of Series B-1 Preferred Stock (the “*Series B-1 Preference*”). Payment of the Series B-1 Preference shall be made to the holders of Series B-1 Preferred Stock before any distribution shall be made in respect of the Series A-1 Preferred Stock or Common Stock. After complete payment to the holders of Series E-1 Preferred Stock, Series D-1 Preferred Stock and Series C-1 Preferred Stock, if the remaining assets and surplus funds distributed among the holders of Series B-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the remaining assets and surplus funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series B-1 Preferred Stock.

(d) In the event of any Liquidation Event, whether voluntary or not, subject to Section 2(h) below, the holders of Series A-1 Preferred Stock shall be entitled to receive, before any amount shall be paid to holders of Common Stock, an amount per share equal to \$23.064 (as adjusted for stock splits, combinations or similar events after the Filing Date) and all declared but unpaid dividends with respect to such shares of Series A-1 Preferred Stock (the "*Series A-1 Preference*"). Payment of the Series A-1 Preference shall be made to the holders of Series A-1 Preferred Stock before any distribution shall be made in respect of the Common Stock. After complete payment to the holders of Series E-1 Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock and Series B-1 Preferred Stock, if the remaining assets and surplus funds distributed among the holders of Series A-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the remaining assets and surplus funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series A-1 Preferred Stock.

(e) After payment has been made to the holders of the Preferred Stock of the full amounts to which they are entitled pursuant to paragraphs (a) - (d) above, subject to Section 2(h) below, the remaining assets and funds of the Corporation available for distribution shall be distributed ratably on an as converted to Common Stock basis among the holders of Series E-1 Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock, Series B-1 Preferred Stock, Series A-1 Preferred Stock and Common Stock until the holders of Series E-1 Preferred Stock have received (in addition to the amount specified above in Section 2(a)) an amount per share equal to half (1/2) of the Series E-1 Preference, at which time such holders shall not be entitled to receive any additional distributions pursuant to this Section 2(e); the holders of Series D-1 Preferred Stock have received (in addition to the amount specified above in Section 2(b)) an amount per share equal to half (1/2) of the Series D-1 Preference, at which time such holders shall not be entitled to receive any additional distributions pursuant to this Section 2(e); the holders of Series C-1 Preferred Stock have received (in addition to the amount specified above in Section 2(b)) an amount per share equal to half (1/2) of the Series C-1 Preference, at which time such holders shall not be entitled to receive any additional distributions pursuant to this Section 2(e); the holders of the Series B-1 Preferred Stock have received (in addition to the amount specified above in Section 2(c)) two (2) times the Series B-1 Preference, at which time such holders shall not be entitled to receive any additional distributions pursuant to this Section 2(e); and the holders of the Series A-1 Preferred Stock have received (in addition to the amount specified above in Section 2(d)) two (2) times the Series A-1 Preference, at which time such holders shall not be entitled to receive any additional distributions pursuant to this Section 2(e). After payment has been made to the holders of the Preferred Stock of the full amounts to which they are entitled pursuant to the preceding sentence, subject to Section 2(h) below, all of the

remaining assets and funds of the Corporation available for distribution shall be distributed ratably among the holders of Common Stock.

(f) A Liquidation Event, within the meaning of this Section 2 shall include (unless waived by the holders of at least 70% of the outstanding shares of Preferred Stock voting together as a single class): (i) (A) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, continue to hold at least a majority of the voting power of the surviving entity in substantially the same proportions (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred; provided that an acquisition as contemplated pursuant to this Section 2(f) shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof; and (ii) a sale of all or substantially all of the assets of the Corporation.

(g) The value of securities and property paid or distributed in accordance with this Section 2 shall be computed at fair market value at the time made available to stockholders, all as determined by the Board of Directors in the good faith exercise of its reasonable business judgment, provided that: (i) if such securities are listed on any established stock exchange or a national market system, their fair market value shall be the average closing sales price for such securities as quoted on such system or exchange (or the largest such exchange) for the five business days preceding the date the value is to be determined (or if there are no sales for such dates, then for the last five preceding business days on which there were sales); and (ii) if such securities are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the average of the mean between the high bid and low asked prices for such securities on the five business days preceding the date the value is to be determined (or if there are no quoted prices for such dates, then for the last five preceding business days on which there were quoted prices).

(h) Nothing hereinabove set forth shall affect in any way the right of each holder of Preferred Stock to convert such shares at any time and from time to time into Common Stock in accordance with Section 5 hereof. In addition, notwithstanding paragraphs (a) through (e) above, if as a result of an actual conversion immediately prior to a Liquidation Event of all outstanding shares (including all accrued but unpaid dividends (whether or not declared) in the case of the Series E-1 Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock and Series B-1 Preferred Stock, and

including all declared but unpaid dividends in the case of the Series A-1 Preferred Stock) of any series of Preferred Stock to Common Stock pursuant to the terms specified in Section 5, holders of such series, in the aggregate, would be entitled to receive (with respect to such series) an amount greater than the amount that, but for such actual conversion would be distributed pursuant to paragraphs (a) through (e) above, as applicable, to such holders, then for purposes of paragraphs (a) through (e) above, all holders of such series shall be deemed to have converted, immediately prior to such Liquidation Event, all of their shares of such series of Preferred Stock (including all accrued but unpaid dividends (whether or not declared) in the case of the Series E-1 Preferred Stock, Series D-1 Preferred Stock, Series C-1 Preferred Stock and Series B-1 Preferred Stock, and including all declared but unpaid dividends in the case of the Series A-1 Preferred Stock) to Common Stock pursuant to the terms specified in Section 5, and such holders shall not be entitled to receive any distribution pursuant to paragraphs (a) through (e) that would otherwise be made to holders of such series of Preferred Stock, but instead such holders shall be entitled to receive distributions as holders of Common Stock pursuant to Section 2(e).

3. Redemption.

(a) On or after the date that is three years after the Filing Date, at the individual option of each holder of shares of Preferred Stock (collectively, the “*Redeemable Preferred*”) and upon election in writing of at least 70% of the outstanding shares of Redeemable Preferred, voting together as a single class, the Corporation shall redeem, on the terms and conditions stated herein, out of funds legally available therefor, all or part of the Redeemable Preferred in three semi-annual installments (the “*Redemption Dates*,” the first of which is referred to herein as the “*Initial Redemption Date*”). The number of shares of Redeemable Preferred to be redeemed by such holder must be specified in a written request for redemption delivered to the Corporation by the holder not less than 90 days before the Initial Redemption Date. Such written request must specify a person to act as redemption representative for purposes of this provision. The person specified to act as redemption representative by the holders of a majority of the outstanding shares of Redeemable Preferred (the “*Redemption Representative*”) shall represent all holders of Redeemable Preferred in all decisions and actions related to redemption of the Redeemable Preferred for purposes of this provision. The Corporation may rely on any such decisions or instructions of the Redemption Representative. The second and third Redemption Dates shall be six months and 12 months, respectively, after the Initial Redemption Date. The Corporation shall effect such redemptions by paying in cash in exchange for (i) the shares of Series A-1 Preferred Stock to be redeemed a sum equal to the greater of (x) \$23.064 per share plus 6% per annum from October 6, 1998, but less all dividends paid on such shares, or (y) the “*Series A-1 Fair Value*” (as defined below), (ii) the shares of Series B-1 Preferred Stock to be redeemed a sum equal to the greater of (x) \$23.0601 per share plus 6% per annum from August 4, 2000, but less all dividends

paid on such shares, or (y) the "**Series B-1 Fair Value**" (as defined below), (iii) the shares of Series C-1 Preferred Stock to be redeemed a sum equal to the greater of (x) \$1.4932 per share plus 6% per annum from the date any shares of Series C-1 Preferred Stock are first issued, but less all dividends paid on such shares, or (y) the "**Series C-1 Fair Value**" (as defined below), (iv) the shares of Series D-1 Preferred Stock to be redeemed a sum equal to the greater of (x) \$1.53467 per share plus 6% per annum from the date any shares of Series D-1 Preferred Stock are first issued, but less all dividends paid on such shares, or (y) the "**Series D-1 Fair Value**" (as defined below), and (v) the shares of Series E-1 Preferred Stock to be redeemed a sum equal to the greater of (x) \$3.0399 per share plus 6% per annum from the date any shares of Series E-1 Preferred Stock are first issued, but less all dividends paid on such shares, or (y) the "**Series E-1 Fair Value**" (as defined below), in each case for each share of Redeemable Preferred determined as of ninety (90) days before the Initial Redemption Date and every 18 months thereafter until all shares of Redeemable Preferred are redeemed or no longer outstanding (the "**Redemption Price**"). Provided, however, that the Corporation shall not be required under this section to redeem on each Redemption Date more than 33-1/3% of the shares of Redeemable Preferred outstanding on the first Redemption Date. If the holders of Redeemable Preferred elect to redeem more than 33-1/3% on any Redemption Date, redemption shall be prorated on the basis of shares requested to be redeemed. If the holders of Redeemable Preferred elect redemption of fewer than 33-1/3%, then the percentage to be redeemed at the next Redemption Date shall be increased by the difference between 33-1/3% and the percentage actually redeemed. Upon providing at least ninety (90) days written notice to the Corporation, any shares of Redeemable Preferred outstanding after the third Redemption Date may be redeemed by the holder thereof at any time and from time to time. All declared but unpaid dividends shall be paid concurrently with any redemption. The Corporation shall effect such redemption out of funds that are, or through the best efforts of the Corporation can be made, legally available for such purposes, in priority to any other scheduled or pending redemption or distribution.

(b) For purposes of this Section 3, the "**Series A-1 Fair Value**", "**Series B-1 Fair Value**", "**Series C-1 Fair Value**", "**Series D-1 Fair Value**" and "**Series E-1 Fair Value**" (together, the "**Fair Values**") shall mean the amount mutually agreed upon by the Corporation and the Redemption Representative and such amount may be different for the Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock and Series E-1 Preferred Stock. If the Corporation and the Redemption Representative do not agree on the Series A-1 Fair Value, the Series B-1 Fair Value, the Series C-1 Fair Value, the Series D-1 Fair Value or the Series E-1 Fair Value of the Redeemable Preferred, then the Fair Values not agreed upon shall be determined by a valuation performed by a nationally recognized, independent investment banking, accounting or valuation consulting firm selected by the Corporation and the Redemption

Representative (the "**Appraiser**") and such valuation shall be final and binding. For purposes of determining the Fair Values, the aggregate discount for minority ownership, absence of public market, limitations on means of the Corporation to complete the redemption, and restrictions on transferability of the Redeemable Preferred shall not exceed 15% of the respective Fair Values. If the combined totals of the Fair Values determined by the Appraiser (the "**Appraiser Value**") is 90% or greater of the value proposed by the Redemption Representative but is not 110% or less of the value proposed by the Corporation, then the Corporation shall pay the costs and expenses of the Appraiser. If the Appraiser Value is 110% or less than the value proposed by the Corporation but is not 90% or greater of the value proposed by the Redemption Representative, then the Corporation shall pay the costs and expenses of the Appraiser but the Corporation shall deduct all of such costs and expenses from the amount paid the holders of Redeemable Preferred on the Initial Redemption Date. In all other cases, one half of the costs and expenses of the Appraiser shall be deducted from the amount paid to the holders of Redeemable Preferred on the Initial Redemption Date.

(c) At least fifteen (15) but no more than thirty (30) days prior to each Redemption Date, written notice shall be mailed, first class postage paid, to each holder of record (at the close of business on the business day preceding the day on which notice is given) of the Redeemable Preferred to be redeemed at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Prices, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, the certificate or certificates representing the shares to be redeemed (the "**Redemption Notice**"). Except as provided in 3(d), on or after the Redemption Date, each holder of Redeemable Preferred to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Prices of 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. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Prices, all rights of the holders of shares of Redeemable Preferred designated for redemption in the Redemption Notice as holders of Redeemable Preferred (except the right to receive the Redemption Prices without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for the redemption of shares of Redeemable Preferred on any

Redemption Date are insufficient to redeem the total number of shares of Redeemable Preferred to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of shares ratably among the holders of such shares to be redeemed based on their holdings of Redeemable Preferred. The shares of Redeemable Preferred not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Redeemable Preferred such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date, but which it has not redeemed.

(e) On or prior to each Redemption Date, the Corporation shall deposit the Redemption Prices of all shares of Redeemable Preferred designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Prices for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered his share certificate to the Corporation pursuant to Section 3(c) above. As of the date of such deposit (even if prior to the Redemption Date), the deposit shall constitute full payment of the shares to their holders, and from and after the date of the deposit the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust corporation payment of the Redemption Prices of the shares, without interest, upon surrender of their certificates therefor and the right to convert such shares as provided in Section 5. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this section for the redemption of shares thereafter converted into shares of the Corporations' Common Stock pursuant to Section 5 hereof prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this section remaining unclaimed at the expiration of two (2) years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

(f) The Redeemable Preferred shall be convertible into Common Stock at the option of each holder at any time prior to the Initial Redemption Date in accordance with Article Fifth, Section 5, of this Amended and Restated Certificate. Any Redeemable Preferred so converted into Common Stock shall be treated for all purposes as Common

Stock and the holders thereof shall have no rights as holders of Preferred Stock after such conversion.

4. Voting Rights.

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

(b) Notwithstanding the provisions of paragraph (a), at each annual or special meeting called for the purpose of electing directors or action taken by written consent for such purpose, (i) the holders of the Series A-1 Preferred Stock, voting together as a separate series, shall be entitled to elect one (1) member of the Board of Directors, (ii) the holders of the Series B-1 Preferred Stock, voting together as a separate series, shall be entitled to elect one (1) member of the Board of Directors, (iii) the holders of the Series D-1 Preferred Stock, voting together as a separate series, shall be entitled to elect one (1) member of the Board of Directors, (iv) the holders of the Series E-1 Preferred Stock, voting together as a separate series, shall be entitled to elect two (2) members of the Board of Directors (the directors elected pursuant to Sections 4(b)(i)-(iv) above shall be referred to herein as, the "***Preferred Directors***"). and (v) the holders of the Common Stock, voting together as a separate class, shall be entitled to elect one (1) member of the Board of Directors. The holders of the Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect all remaining members of the Board of Directors of this Corporation.

(c) Any director who shall have been elected by a specified group of stockholders may be removed during the term of office, either for or without cause, by, and only by, the affirmative vote of the holders of a majority of the shares of such specified group. In the event of any vacancy in the office of a director elected by a specified group of stockholders, a successor shall be elected to hold office for the

unexpired term and any successive term of such director by the affirmative vote of a majority of the shares of such specified group.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Preferred Stock. Each share of Series E-1 Preferred Stock shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing \$3.0399 for each share of Series E-1 Preferred Stock by the Series E-1 Conversion Price (as hereinafter defined) at the time in effect for such share. The initial conversion price (the “*Series E-1 Conversion Price*”) for the Series E-1 Preferred Stock shall be \$3.0399 and shall be subject to adjustment as set forth in subsection (d) below. The number of shares of Common Stock into which the Series E-1 Preferred Stock is convertible is hereinafter referred to as the “*Series E-1 Conversion Rate*.” All accrued but unpaid dividends (whether or not declared) on the Series E-1 Preferred Stock shall also be convertible into fully-paid and non assessable shares of Common Stock in accordance with Section 1(a) of this Article Fifth. Each share of Series D-1 Preferred Stock shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing \$1.53467 for each share of Series D-1 Preferred Stock by the Series D-1 Conversion Price (as hereinafter defined) at the time in effect for such share. The initial conversion price (the “*Series D-1 Conversion Price*”) for the Series D-1 Preferred Stock shall be \$1.53467 and shall be subject to adjustment as set forth in subsection (d) below. The number of shares of Common Stock into which the Series D-1 Preferred Stock is convertible is hereinafter referred to as the “*Series D-1 Conversion Rate*.” All accrued but unpaid dividends (whether or not declared) on the Series D-1 Preferred Stock shall also be convertible into fully-paid and non assessable shares of Common Stock in accordance with Section 1(b) of this Article Fifth. Each share of Series C-1 Preferred Stock shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing \$1.4932 for each share of Series C-1 Preferred Stock by the Series C-1 Conversion Price (as hereinafter defined) at the time in effect for such share. The initial conversion price (the “*Series C-1 Conversion Price*”) for the Series C-1 Preferred Stock shall be \$1.4932 and shall be subject to adjustment as set forth in subsection (d) below. The number of shares of Common Stock into which the Series C-1 Preferred Stock is convertible is hereinafter referred to as the “*Series C-1 Conversion Rate*.” All accrued but unpaid dividends (whether or not declared) on the Series C-1 Preferred Stock shall also be convertible into fully-paid and non assessable shares of Common Stock in accordance with Section 1(b) of this Article Fifth. Each share of Series B-1 Preferred Stock shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing \$1.4932 for

each share of Series B-1 Preferred Stock by the Series B-1 Conversion Price (as hereinafter defined) at the time in effect for such share. The initial conversion price (the "**Series B-1 Conversion Price**") for the Series B-1 Preferred Stock shall be \$1.4932 and shall be subject to adjustment as set forth in subsection (d) below. The number of shares of Common Stock into which the Series B-1 Preferred Stock is convertible is hereinafter referred to as the "**Series B-1 Conversion Rate**." All accrued but unpaid dividends (whether or not declared) on the Series B-1 Preferred Stock shall also be convertible into fully-paid and non assessable shares of Common Stock in accordance with Section 1(c) of this Article Fifth. Each share of Series A-1 Preferred Stock, together with declared but unpaid dividends, shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing \$1.4932 for each share of Series A-1 Preferred Stock by the Series A-1 Conversion Price (as hereinafter defined) at the time in effect for such share. The initial conversion price (the "**Series A-1 Conversion Price**") for the Series A-1 Preferred Stock shall be \$1.4932 and shall be subject to adjustment as set forth in subsection (d) below. The number of shares of Common Stock into which the Series A-1 Preferred Stock is convertible is hereinafter referred to as the "**Series A-1 Conversion Rate**."

(b) Automatic Conversion. Each share of Preferred Stock, together with declared but unpaid dividends in the case of the Series A-1 Preferred Stock and accrued but unpaid dividends in the case of the Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock and Series E-1 Preferred Stock, shall automatically be converted into shares of Common Stock at the then effective Series A-1 Conversion Rate, Series B-1 Conversion Rate, Series C-1 Conversion Rate, Series D-1 Conversion Rate or Series E-1 Conversion Rate (as the case may be) (i) upon the closing of an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation to the public at a price per share (prior to the deduction of underwriter commissions and offering expenses) of not less than \$7.00 per share (appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction after the Filing Date) and an aggregate net offering price to the public of greater than \$50,000,000 (after deduction of underwriter's commissions and expenses) or (ii) upon the Corporation's receipt of the written consent of the holders of at least 70% of the outstanding shares of Preferred Stock, voting together as a single class (the "**Automatic Conversion**"). In the event of the Automatic Conversion of the Preferred Stock upon a public offering, the person(s) entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. Notwithstanding anything to the contrary, pursuant to that certain Series E-1 Preferred Stock Purchase Agreement between the Corporation and certain investors dated on or about the Filing Date (the "**Purchase Agreement**"), if a Defaulting Investor (as such term is defined in the Purchase

Agreement) fails to purchase shares of Series E-1 Preferred Stock in the Second Stage Closing (as such term is defined in the Purchase Agreement) as provided for in Section 1.4 of the Purchase Agreement, then all existing shares of Series E-1 Preferred Stock held by such Defaulting Investor shall automatically and without further action on the part of any stockholder, be immediately converted into shares of Common Stock at the then effective Series E-1 Conversion Rate pursuant to Section 1.4 of the Purchase Agreement.

(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 in good faith by the Board of Directors). Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that in the event of an Automatic Conversion pursuant to Section 5(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of Automatic Conversion upon a public offering, on the date of closing of the offering and in the case of an Automatic Conversion by a majority of the outstanding shares Preferred Stock, upon receipt by the Corporation of the written consent of such stockholders. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Adjustments to Conversion Price.

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

(1) 'Conversion Price' without further designation shall mean the Series A-1 Conversion Price, the Series B-1 Conversion Price, the Series C-1 Conversion Price, the Series D-1 Conversion Price and the Series E-1 Conversion Price.

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

(3) 'Original Issue Date' shall mean the Filing Date.

(4) 'Convertible Securities' shall mean any evidences of indebtedness, shares (other than the Common Stock, Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock or Series E-1 Preferred Stock issued prior to the Filing Date) or other securities convertible into or exchangeable for Common Stock.

(5) 'Additional Shares of Common Stock' shall mean all shares of Common Stock issued (or, pursuant to Section 5(d)(iv), deemed to be issued) by the Corporation after the Filing Date, other than shares of Common Stock issued or issuable:

a. upon conversion of the shares of Series A-1 Preferred Stock, Series B-1 Preferred Stock, Series C-1 Preferred Stock, Series D-1 Preferred Stock or Series E-1 Preferred Stock;

b. to officers, directors, and employees of, and consultants to the Corporation pursuant to any plan, arrangement, agreement, or contract approved by the Board of Directors;

c. pursuant to equipment financing transactions approved by the Board of Directors including the Preferred Directors;

d. as a dividend or distribution on Preferred Stock (provided that such dividend is paid to all holders of Preferred Stock), or any event for which adjustment is made pursuant to Section 5(d)(vi);

e. in connection with license or sponsored research arrangements with strategic technology alliances approved by the Board of Directors including the Preferred Directors; or

f. to a corporate partner sponsoring proof of principle technology as approved by the Board of Directors including the Preferred Directors.

(ii) No Adjustment of Conversion Price. Except as provided in Section 5(d)(iv)(2) and (3), no adjustment in the Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to, such issue.

(iii) Upon Issuance of Additional Shares of Common Stock.

(1) In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(d)(iv)) for consideration per share less than the then existing Series E-1 Conversion Price, then, and thereafter successively upon each such issuance or sale, the Series E-1 Conversion Price then in effect shall simultaneously with such issuance or sale (except as provided in Section 5(d)(i)(5)) be adjusted to a price equal to such consideration per share.

(2) In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(d)(iv)) for consideration per share less than the then existing Series D-1 Conversion Price, then, and thereafter successively upon each such issuance or sale, the Series D-1 Conversion Price then in effect shall simultaneously with such issuance or sale (except as provided in Section 5(d)(i)(5)) be adjusted to a price equal to such consideration per share.

(3) In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(d)(iv)) for consideration per share less than the then existing Series C-1 Conversion Price, then, and thereafter successively upon each such issuance or sale, the Series C-1 Conversion Price then in effect shall simultaneously with such issuance or sale (except as provided in Section 5(d)(i)(5)) be adjusted to a price equal to such consideration per share.

(4) In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(d)(iv)) for consideration per share less than the then existing Series B-1 Conversion Price, then, and thereafter successively upon each such issuance or sale, the Series B-1 Conversion Price then in effect shall simultaneously with such

issuance or sale (except as provided in Section 5(d)(i)(5)) be adjusted to a price equal to such consideration per share.

(5) In the event this Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(d)(iv)) for consideration per share less than the then existing Series A-1 Conversion Price, then, and thereafter successively upon each such issuance or sale, the Series A-1 Conversion Price then in effect shall simultaneously with such issuance or sale (except as provided in Section 5(d)(i)(5)) be adjusted to a price equal to such consideration per share.

(iv) Deemed Issue of Additional Shares of Common Stock. Except as otherwise provided in Sections 5(d)(i)(5) and 5(d)(ii), in the event the Corporation at any time or from time to time after the Filing Date 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 and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) except as provided in Section 5(d)(iv)(2), no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or in the number of shares of Common Stock issuable, upon the exercise, conversion, or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been

exercised or converted, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

a. in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were 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 all such Options, whether or not exercised, 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 Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 5(d)(v) upon the issue of the Convertible Securities with respect to which such Options were actually exercised.

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of:

a. increasing the Series A-1 Conversion Price to an amount that exceeds the lower of (i) the Series A-1 Conversion Price on the original adjustment date, or (ii) the Series A-1 Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; or

b. increasing the Series B-1 Conversion Price to an amount that exceeds the lower of (i) the Series B-1 Conversion Price on the original adjustment date, or (ii) the Series B-1 Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; or

c. increasing the Series C-1 Conversion Price to an amount that exceeds the lower of (i) the Series C-1 Conversion Price on the original adjustment date, or (ii) the Series C-1 Conversion Price that would have resulted from any

issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; or

d. increasing the Series D-1 Conversion Price to an amount that exceeds the lower of (i) the Series D-1 Conversion Price on the original adjustment date, or (ii) the Series D-1 Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

e. increasing the Series E-1 Conversion Price to an amount that exceeds the lower of (i) the Series E-1 Conversion Price on the original adjustment date, or (ii) the Series E-1 Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; or

f. adjusting any Common Stock previously issued upon conversion of Preferred Stock;

(5) in the case of any Options which expire by their terms not more than 90 days after the date of issue thereof, no adjustment of the Conversion Price shall be made (except as to shares of Preferred Stock converted in such period) until the expiration or exercise of all such Options simultaneously issued, whereupon such adjustment shall be made in the manner provided in clause (3) above.

(v) Determination of Consideration. For purposes of this Section 5(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation after deducting any reasonable discounts, commissions or other expenses allowed, paid, or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof and excluding amounts paid or payable for accrued interest or accrued dividends;

b. insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors irrespective of any accounting treatment and after deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance of sale

thereof and excluding amounts paid or payable for accrued interest or accrued dividends; and

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

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5(d)(iv), relating to Options and Convertible Securities, shall be determined by dividing:

a. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein 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

b. 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.

(3) Stock Dividends. Any Additional Shares of Common Stock relating to stock dividends which may be issued by the Corporation shall not be deemed to have been issued for purposes of Section 5(d)(iv) but shall be subject to the provisions of Section 5(d)(vi).

(vi) Dividends, Splits, Subdivisions, Combinations or Consolidation of Common Stock. In the event the outstanding shares of Common Stock shall be increased by stock dividend payable in Common Stock, stock split, subdivision, or other similar transaction into a greater number of shares of Common Stock after the Filing Date, the Conversion Price then in effect shall, concurrently with the effectiveness of such event, be decreased in proportion to the percentage increase in the outstanding number of shares of Common Stock (other than with respect to the stock split effected on the Filing Date). In the event the outstanding shares of Common Stock shall be decreased by reverse stock split, combination, consolidation, or other similar transaction into a lesser number of

shares of Common Stock, the Conversion Price then in effect shall, concurrently with the effectiveness of such event, be increased in proportion to the percentage decrease in the outstanding number of shares of Common Stock.

(vii) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Section 5, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Preferred Stock.

(viii) Adjustments for Reclassification, Exchange, and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, or any reclassification of the capital stock of the Corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares after the Filing Date), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such Preferred Stock, immediately before that change. The provisions of this Section (iii) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(e) No Impairment. The Corporation will not, by amendment of its Amended and Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate pursuant to this Section 5, the Corporation shall promptly notify the holders of Preferred Stock of the amount of such adjustment or readjustment. If requested by a holder of Preferred Stock, the Corporation shall promptly after such adjustment or readjustment also at its expense cause independent public accountants of recognized standing selected by the Corporation (who may be the independent public accountants then auditing the books of the corporation) to 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; (iii) the Series A-1 Conversion Rate, Series B-1 Conversion Rate, Series C-1 Conversion Rate and Series D-1 Conversion Rate at the time in effect; and (iv) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

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

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

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

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

(iv) to merge or consolidate with or into any other corporation, or sell, lease, or convey all or substantially all its property or business, or to liquidate, dissolve, or wind up; then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock:

(1) at least 20 days prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (iii) and (iv) above; and

(2) in the case of the matters referred to in (iii) and (iv) above, at least 20 days prior written notice of the date when the same shall take place (and

specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event) or the record date for the determination of such holders if such record date is earlier.

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

(h) Issue Taxes. The Corporation shall pay any and all issue and other taxes (other than income taxes) that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of the Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

(j) Status of Converted Stock. In case any shares of Preferred Stock shall be converted pursuant to this Section 5, the shares so converted shall resume the status of authorized but unissued shares of Preferred Stock.

6. Protective Provisions.

(a) In addition to any other rights provided by law, so long as any shares of Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 70% of the outstanding shares of Preferred Stock voting together as a single class:

(i) amend or repeal any provision of, or add any provision to: (A) the Corporation's Certificate of Incorporation; or (B) the Corporation's Bylaws, if such action would increase the authorized number of directors above seven (7) directors;

(ii) alter or change the rights, preferences, privileges, or restrictions of the Preferred Stock, increase or decrease the authorized shares of any previously authorized class or series of Preferred Stock;

(iii) authorize or issue any security (debt or equity) having any preference or priority as to dividends or redemption rights, liquidation preferences, conversion rights, or voting rights, superior to any preference, privilege, or right of the Preferred Stock.

(iv) enter into any merger, reorganization, sale of control or any transaction in which all or substantially all of the assets of the Corporation are sold;

(v) declare or pay, in kind or in stock, any dividend;

(vi) enter into or be bound by any compromise or arrangement pursuant to Article Eighth; or

(vii) redeem any shares of Preferred Stock or Common Stock except in accordance with the provisions of this Amended and Restated Certificate of Incorporation and except for repurchases of Common Stock in connection with the termination of employees and consultants and in accordance with repurchase rights contained in agreements with employees and consultants.

SIXTH. The Corporation is to have perpetual existence.

SEVENTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The board of directors of the Corporation is expressly authorized:

(i) To make, alter or repeal the bylaws of the Corporation.

(ii) To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.

(iii) To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

(iv) By a majority of the whole board, to designate one or more committees, each committee to consist of one or more of the directors of the Corporation;

provided that no committee may be established after the date of filing this Amended and Restated Certificate of Incorporation without the approval of the Preferred Directors. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member of any committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member; provided that such replacement director must be approved by the Preferred Directors. Any such committee, to the extent provided in the resolution of the Board of Directors, or in the bylaws of the Corporation, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in Section 151(a) of the General Corporation Law of the State of Delaware, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), adopting an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of the State of Delaware, recommending to the stockholders the sale, lease or exchange, of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the bylaws of the Corporation; and, unless the resolution or bylaws expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of the State of Delaware.

(v) Subject to the other provisions of this Certificate, when and as authorized by the stockholders in accordance with statute, to sell, lease or exchange all or substantially all of the property and assets of the Corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property including shares of stock in, and/or other securities of, any other Corporation or Corporations, as its board of directors shall deem expedient and for the best interests of the Corporation.

B. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the bylaws of the Corporation may provide or as may be designated from time to time by the board of directors of the Corporation.

EIGHTH. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

NINTH. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

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

TENTH.

A. Right to Indemnification.

Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative ("*proceeding*"), by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a director or officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director or officer, employee or agent of another Corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended, (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said Law permitted the Corporation to provide prior to such amendment) against all expenses, liability and loss including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that the Corporation shall indemnify any such person seeking indemnity in connection with an action, suit or proceeding (or part thereof) initiated by such person only if such action, suit or proceeding (or part thereof) was authorized by the board of directors of the Corporation. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses incurred by a director or officer of the Corporation in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of such proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Section or otherwise.

B. Right of Claimant to Bring Suit.

If a claim under paragraph A of Article TENTH is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a

defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to this Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

C. Non Exclusivity of Rights.

The rights conferred on any person by paragraphs A and B of Article TENTH shall not be exclusive of any other right which such persons may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, by law, agreement, vote of stockholders or disinterested directors or otherwise.

D. Insurance.

The Corporation may maintain insurance, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another Corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

ELEVENTH. The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.