

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ADVION BIOSCIENCES, INC.**

Advion BioSciences, Inc., a corporation organized and existing under the laws of the state of Delaware, hereby certifies as follows:

1. The Certificate of Incorporation of Advion Holdings, Inc. (the "Certificate of Incorporation") was filed on January 31, 2005. A Certificate of Amendment to the Certificate of Incorporation of Advion Holdings, Inc., changing its name to Advion BioSciences, Inc. (the "Corporation"), was filed on March 7, 2005. Additional Certificates of Amendment to the Certificate of Incorporation of the Corporation were filed on September 29, 2005 and January 18, 2006.

2. This Amended and Restated Certificate of Incorporation was recommended to the stockholders for approval as being advisable and in the best interests of the Corporation by action of the Board of Directors at a meeting duly called and held on August 2, 2007.

3. This Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation as heretofore in effect and was duly adopted by the Corporation's Board of Directors and the Corporation's stockholders in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

The text of the Corporation's certificate of incorporation is amended and restated in its entirety as follows:

**ARTICLE ONE**

The name of the corporation is Advion BioSciences, Inc.

**ARTICLE TWO**

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

**ARTICLE THREE**

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

**ARTICLE FOUR**

The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is (i) 105,000,000 shares of common stock, \$.001 par value per share ("Common Stock") and (ii) 59,936,620 shares of Preferred Stock, \$.001 par value per share

(“Preferred Stock”), of which 5,764,710 shares are designated as Series A Preferred Stock (“Series A Preferred Stock”), and 54,171,910 shares are designated as Series B Preferred Stock (“Series B Preferred Stock”), each with the rights and preferences set forth below.

#### A. COMMON STOCK

1. Voting Rights. Subject to the rights and preferences of any Preferred Stock outstanding, except as otherwise required by law or this Certificate of Incorporation, the holders of Common Stock shall be entitled to one vote for each share held with respect to all matters voted on by the stockholders of the Corporation.

2. Dividends. Dividends may be paid on the Common Stock out of funds legally available therefor as and when declared by the Board of Directors of the Corporation (the “Board of Directors”). However, no dividend on the Common Stock shall be declared or paid unless (i) all dividends accrued or declared but unpaid on the Preferred Stock shall have been paid in full to the holders of Preferred Stock or funds necessary for payment of such dividends shall have been set aside by the Corporation in trust for the account of holders of Preferred Stock so as to be available for such payments, and (ii) unless such dividend consists only of Common Stock or other securities of the Corporation, there shall simultaneously be declared and paid dividends to all holders of Preferred Stock in an amount which such holders would have received had all shares of Preferred Stock been converted (on the date for determination of stockholders entitled to such dividend) to Common Stock as provided in this Article FOUR.

3. Liquidation Rights. Subject to the prior and superior right of any Preferred Stock outstanding, upon any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Corporation, the holders of Common Stock shall be entitled to receive distributions as provided below.

4. Relative Rights of Preferred Stock and Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations or restrictions, of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of Preferred Stock.

5. Increase/Decrease of Common Stock. Notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law, and subject to any additional consent requirements as may be established in the terms of any series of Preferred Stock, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation, voting as a single class, with each such share being entitled to such number of votes per share as is provided in this Article FOUR.

#### B. PREFERRED STOCK

1. Dividends.

(a) The holders of shares of Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors, annual dividends in cash at the rate of \$0.007334 per share per annum. Such dividends shall

accrue from day to day on each share of Series A Preferred Stock from August 1, 2001, whether or not earned or declared, and shall be cumulative.

(b) The holders of Series B Preferred Stock shall be entitled to receive, when and if declared by the Board of Directors, out of funds legally available for the payment of dividends, annual dividends in cash at the rate of eight percent (8%) per share per annum of the Purchase Price for the Series B Preferred Stock (as defined below, which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification of shares or other similar event). Such dividends shall accrue from day to day on each share of Series B Preferred Stock from the date of issuance of such share, whether or not earned or declared, and shall be cumulative.

(c) When and as dividends are declared payable in cash, property or shares of the Corporation's capital stock on shares of Common Stock as provided above, unless such dividend consists only of Common Stock or other securities of the Corporation, the Corporation shall declare at the same time and pay to all holders of Preferred Stock an amount which such holders would have received had all shares of Preferred Stock been converted (on the date for determination of stockholders entitled to such dividend) to Common Stock pursuant to the provisions of this Article FOUR.

(d) No dividends shall be declared or paid on the Common Stock or the Preferred Stock except as set forth in this Section 1 and as provided above for the Common Stock. No dividends shall be declared or paid on any share of a series of Preferred Stock unless an equivalent dividend is declared or paid on each share of any other series of Preferred Stock as provided in this Section 1.

## 2. Liquidation.

### (a) Payment to Preferred Stock and Common Stock upon Liquidation.

(i) Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of each share of Series A Preferred Stock and each share of Series B Preferred Stock shall be entitled to receive an amount per share, to be paid first out of the assets of the Corporation available for distribution to holders of the capital stock of all classes, equal to the Purchase Price for such series of Preferred Stock (as defined below, which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, distribution, combination of shares, reclassification of shares or other similar event), plus all dividends accrued or declared but unpaid thereon, to and including the date full payment shall be tendered to the holders of Preferred Stock with respect to such liquidation, dissolution or winding up. For purposes of this Certificate of Incorporation, "Purchase Price" shall mean \$0.1214 per share of Series A Preferred Stock and \$0.77 per share of Series B Preferred Stock. If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of Preferred Stock of all amounts distributable to them under this Section 2(a)(i), then the entire assets of the Corporation available for such distribution shall be distributed ratably among the holders of Preferred Stock on a pari passu basis in proportion to the full preferential amount each such holder is otherwise entitled to receive.

(ii) After the payments described in Section 2(a)(i) shall have been made in full to the holders of the Preferred Stock, or funds necessary for such payments shall have been set aside by the Corporation in trust for the account of holders of Preferred Stock so as to be available for such payments, the remaining assets available for distribution shall be distributed among the holders of the Preferred Stock and the Common Stock ratably in proportion to the number of shares of Common Stock then held by them (with each holder of Preferred Stock being treated for this purpose as holding the number of shares of Common Stock into which such holder could have converted such holder's shares of Preferred Stock immediately prior to such event of liquidation, dissolution or winding up pursuant to the provisions of Section 3).

(iii) Upon conversion of shares of Preferred Stock into shares of Common Stock pursuant to Section 3, the holder of such Common Stock shall not be entitled to any preferential payment or distribution in case of any liquidation, dissolution or winding up of the Corporation, but shall share ratably in any distribution of the assets of the Corporation to all the holders of Common Stock.

(b) Distributions Other than Cash. Whenever the distribution provided for in this Section 2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors.

(c) Merger as Liquidation, etc. The merger or consolidation of the Corporation into or with another corporation (other than (i) a wholly-owned subsidiary of the Corporation in a merger in which the Corporation is the surviving corporation and the Certificate of Incorporation remains unchanged, or (ii) an acquisition by merger, reorganization or consolidation, in which the Corporation is substantively the surviving corporation and operates as a going concern, of another corporation that is engaged in a business similar or related to or complementary with the business of the Corporation and which does not involve a recapitalization or reorganization of the Preferred Stock or Common Stock, and does not involve (in a single transaction or series of related transactions) a transfer of more than 49.9% of the voting power of the Corporation), or the sale of all or substantially all of the assets of the Corporation (other than to a wholly-owned subsidiary of the Corporation), shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 2 unless the holders of at least a majority of the then outstanding shares of Preferred Stock (electing as a single class on an as-converted basis) elect to the contrary by giving written notice thereof to the Corporation at least three (3) days before the effective date of such event. If such notice is given, the provisions of Section 3(g) shall apply. The amount deemed distributed to the holders of Preferred Stock upon any such merger or consolidation or sale shall be the cash or the value of the property, rights or securities distributed to such holders by the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors.

(d) Notice and Opportunity to Exercise Conversion Rights. Notwithstanding anything to the contrary that may be inferred from the provisions of this Section 2, each holder of shares of Preferred Stock shall be entitled to receive notice from the Corporation pursuant to Section 6(c) hereof of any proposed liquidation, dissolution or winding up of the Corporation at least ten (10) days prior to date on which any such liquidation, dissolution or winding up of the

Corporation is scheduled to occur and, at any time prior to any such liquidation, dissolution or winding up of the Corporation to convert any or all of such holder's shares of Preferred Stock into shares of Common Stock pursuant to Section 3 hereof.

3. Conversion. The holders of Preferred Stock shall have conversion rights as follows:

(a) Right to Convert; Conversion Prices. Each share of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Purchase Price by the applicable Conversion Price, determined as hereinafter provided, in effect at the time of conversion. The Conversion Prices shall initially be \$0.1214 per share of Series A Preferred Stock (the "Series A Conversion Price") and \$0.77 per share of Series B Preferred Stock (the "Series B Conversion Price"). The initial Conversion Prices shall be subject to adjustment, in order to adjust the number of shares of Common Stock into which shares of each series of Preferred Stock are convertible, as hereinafter provided.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price for each series of Preferred Stock upon (i) the written election of holders of at least a majority of the then outstanding shares of Preferred Stock (electing as a single class on an as-converted basis) (such election hereinafter referred to as an "Automatic Conversion Election") or (ii) the closing of a public offering, underwritten on a firm commitment basis by an investment banking firm 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 an initial price per share of Common Stock of not less than \$2.00 (subject to equitable adjustment in the event of any stock split, stock dividend, combination, reclassification of shares or other similar event) and with net proceeds to the Corporation of not less than \$50,000,000 (a "Qualifying Initial Public Offering"). In the event of a Qualifying Initial Public Offering, the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted their Preferred Stock until the closing of the Qualifying Initial Public Offering.

Upon the effective date of an Automatic Conversion Election or the closing of the Qualifying Initial Public Offering, all shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Preferred Stock being converted are either delivered to the Corporation or its transfer agent, or the holder of such shares notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the automatic conversion of Preferred Stock, the holders of such Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of its

transfer agent. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of the Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, together with cash in lieu of any fraction of a share as provided below and all dividends declared but unpaid on such shares of Preferred Stock (but not including any accrued yet undeclared dividends on such shares of Preferred Stock). No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price for such series of Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, other than pursuant to Section 3(b), such holder shall surrender the certificate or certificates therefor, duly endorsed for transfer or with duly executed stock transfer powers sufficient to permit transfer attached, at the office of the Corporation or of any transfer agent for the Preferred Stock (or such holder shall notify the Corporation or any transfer agent that such certificates have been lost, stolen or destroyed and shall execute an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith), and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein such holder's name or the name or names of such holder's nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price for such series of Preferred Stock. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to such holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and all dividends declared but unpaid on such shares of Preferred Stock (but not including any accrued yet undeclared dividends on such shares of Preferred 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 certificates for the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon 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 Prices for Certain Dividends, Distributions and Diluting Issues.

(i) Special Definitions. The following definitions shall apply to this Certificate of Incorporation:

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

(2) "Original Issue Date" shall mean February 11, 2002.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than shares of Common Stock or Preferred Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

(A) up to 11,363,633 shares of Series B Preferred Stock issued in connection with the Stock Purchase Agreement dated July 14, 2003 between the Corporation, John D. Henion and Thomas R. Kurz (the "Founders") and certain of the Corporation's stockholders named therein, and warrants to purchase up to 3,043,831 shares of Common Stock issued in connection therewith;

(B) up to 6,493,506 shares of Series B Preferred Stock issued in connection with a Stock Purchase Agreement dated as of September 29, 2005 entered into by the Corporation, Cayuga Venture Fund II, LLC and the Founders, as amended, and warrants to purchase up to 192,242 shares of Common Stock issued in connection therewith;

(C) up to 776,507 shares of Series B Preferred Stock issued in connection with a Stock Issuance Agreement dated October 17, 2003 between the Corporation and Kionix, Inc.;

(D) shares of Common Stock issued or issuable pursuant to Options granted pursuant to the Advanced BioAnalytical Services 1994 Stock Option Plan (the "1994 Plan") prior to the Original Issue Date;

(E) up to 10,730,000 shares of Common Stock issued or issuable to officers, employees or directors of, or consultants to, the Corporation pursuant to either (i) a stock purchase or option plan or other employee stock bonus arrangement, other than the 1994 Plan, in existence prior to the Original Issue Date or (ii) any stock purchase or option plan adopted by the Corporation after the Original Issue Date which is approved by the affirmative vote of a majority of the Board of Directors (collectively with the plans or arrangements identified in subclause (i), the "Plans" and each individually a "Plan"); provided, however, that the number of shares referred to in this clause may be adjusted pursuant to antidilution provisions contained in any such Plan; and provided further, that such number of shares may be adjusted upward by the affirmative vote of the Board of Directors, which vote must include all the Preferred Stock Directors (as defined below);

(F) a warrant to purchase up to 1,023,557 shares of Common Stock (the "Cephas Warrant") issued in connection with an Amended and Restated Note and Warrant Purchase Agreement dated March 7, 2005, between the Corporation and Cephas Capital Partners, L.P.;

(G) shares of Common Stock issued or issuable upon conversion of shares of Preferred Stock or the exercise of any warrant listed in clause (A), (B) or (F) above; and

(H) up to 15,733,073 shares of Series B Preferred Stock issued in connection with a Stock Purchase Agreement dated as of August 7, 2007 entered into by the Corporation and the Investors listed therein, as it may be amended from time to time, and warrants to purchase up to 194,805 shares of Common Stock issuable in connection therewith.

(ii) No Adjustment of Conversion Prices. No adjustment in the number of shares of Common Stock into which any series of Preferred Stock is convertible shall be made, by adjustment in the Conversion Price of such series of Preferred Stock, in respect of the issuance of Additional Shares of Common Stock or otherwise, 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 of such series of Preferred Stock in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock.

(iii) Issue or Sale of Securities Deemed Issue of Additional Shares of Common Stock.

(1) Options and Convertible Securities. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue or sell any Options or Convertible Securities (other than those excluded from the definition of Additional Shares of Common Stock in Section 3(d)(i)(4) pursuant to clauses (A) or (B) thereof) 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 sale or, in case such a record date shall have been fixed, as of the close of business on such record date; provided, however, that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Section 3(d)(v)) received for such Additional Shares of Common Stock would be less than the Series B Conversion Price in effect on the date of and immediately prior to such issue or sale or such record date, as the case may be; and provided further, that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) no further adjustment in the Series B 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;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation, or change in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series B 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 change becoming effective, be recomputed to reflect such change insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;



(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series B 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:

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

(II) 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 3(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Series B Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above; and

(E) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Series B Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Series B Conversion Price shall be adjusted pursuant to this Section 3(d)(iii) as of the actual date of their issuance.

(2) Stock Dividends, Stock Distributions and Subdivisions. In the event the Corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend or make any other distribution on the Common Stock payable in Common Stock or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise) then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued:

(A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution, or

(B) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend shall have been paid on the date fixed therefor, the adjustment previously made in the Conversion Price of such series of Preferred Stock which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price of such series of Preferred Stock shall be adjusted pursuant to this Section 3(d)(iii) as of the time of actual payment of such dividend.

(iv) Adjustment of Series B Conversion Price Upon Issuance, Sale or Deemed Issuance of Additional Shares of Common Stock. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall issue or sell Additional Shares of Common Stock (including, without limitation, Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(iii)(1) but not including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(iii)(2) as a result of a dividend or other distribution on the Common Stock payable in Common Stock or a subdivision of outstanding shares of Common Stock), without consideration or for a consideration per share less than the Series B Conversion Price in effect on the date of and immediately prior to such issue or sale, then and in such event, the Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined in accordance with the following formula:

$$\text{Series B Conversion Price} = \frac{P1 Q1 + P2 Q2}{Q1 + Q2}$$

where:

P1 = Series B Conversion Price in effect immediately prior to such new issue or sale.

Q1 = Number of shares of Common Stock outstanding or deemed outstanding immediately prior to such new issue or sale.

P2 = Weighted average price per share of Common Stock received by the Corporation upon such new issue or sale.

Q2 = Number of shares of Common Stock issued or sold, or deemed to have been issued, in the subject transaction.

For the purpose of this Section 3(d)(iv), (i) the number of shares of Common Stock outstanding at any given time shall exclude shares in the treasury of the Corporation or shares of Common Stock held for the account of the Corporation or any of its subsidiaries; (ii) all shares of Common Stock issuable upon conversion of Preferred Stock outstanding immediately prior to the issue or sale of Additional Shares of Common Stock triggering the adjustment provided for

by this Section 3(d)(iv) shall be deemed to be outstanding; and (iii) immediately after any Additional Shares of Common Stock are deemed issued pursuant to Section 3(d)(iii), such Additional Shares of Common Stock shall be deemed to be outstanding. Anything contained in this Section 3(d)(iv) to the contrary notwithstanding, (1) no adjustment in the Series A Conversion Price shall be made by the operation of this Section 3(d)(iv), and (2) the Series B Conversion Price shall not be reduced at any time if the amount of such reduction would be an amount less than \$.01, but any such amount shall be carried forward and reduction with respect thereto made at the time of and together with any subsequent reduction which, together with such amount and any other amount or amounts so carried forward, shall aggregate \$.01 or more.

(v) Determination of Consideration. For purposes of this Section 3(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 amounts of cash received by the Corporation 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 or sale, as determined in good faith by the Board of Directors; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board 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 3(d)(iii)(1) relating to Options and Convertible Securities shall be determined by dividing (x) the total amount, if any, received or receivable 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 (y) 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.

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(1) Stock Dividends, Distributions or Subdivisions. In the event Additional Shares of Common Stock shall be deemed to have been issued in a dividend or other distribution on the Common Stock payable in Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise) described in Section 3(d)(iii)(2), the Conversion Price of each series of Preferred Stock in effect immediately prior to the record date or effectiveness, as the case may be, of such dividend, distribution or subdivision shall, concurrently with such record date or effectiveness, be proportionately decreased.

(2) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(e) Adjustments for Certain Dividends and Distributions. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, 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 that 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 conversion date, retained such securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

(f) Adjustment for Reclassification, Exchange, or Substitution. In the event that at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a merger, consolidation or sale of assets provided for below), then and in each such event the holder of each such share of Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by a holder of the number of shares of Common Stock into which such share of Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(g) Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Original Issue Date, the Corporation shall merge or consolidate with or into another entity or sell all or substantially all of its assets (other than a consolidation, merger or sale which is treated as a liquidation pursuant to Section 2(c)), each share of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled

upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 3 set forth with respect to the rights and interest thereafter of the holders of Preferred Stock, to the end that the provisions set forth in this Section 3 (including provisions with respect to changes in and other adjustments of the Conversion Price of each series of Preferred Stock) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(h) Waiver of Anti-dilution Protection. To the extent that the provisions of Sections 3(d), 3(e), 3(f) and 3(g) apply to Series A Preferred Stock, such provisions may be waived for all the shares of Series A Preferred Stock by the written consent of the holders of at least a majority in voting power of shares of Series A Preferred Stock then outstanding. To the extent that the provisions of Sections 3(d), 3(e), 3(f) and 3(g) apply to Series B Preferred Stock, such provisions may be waived for all the shares of Series B Preferred Stock by the written consent of the holders of at least a majority in voting power of shares of Series B Preferred Stock then outstanding. For the purposes of this Section 3(h), a waiver on one occasion shall not constitute a waiver on any further occasion.

(i) No Impairment. The Corporation shall not, by amendment of its 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 shall at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect against impairment the rights of the holders of Preferred Stock to convert any or all of such holders' shares of Preferred Stock into shares of Common Stock pursuant to Section 3 hereof.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of each series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each affected holder of such series 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 affected 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 of such series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of such series of Preferred Stock.

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

(l) Common Stock Reserved. The Corporation shall reserve and keep available out of its authorized but unissued Common Stock such number of shares of Common Stock as shall from time to time be sufficient to effect conversion of the Preferred Stock.

(m) Certain Taxes. The Corporation shall pay any issue or transfer taxes payable in connection with the conversion of Preferred Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of Preferred Stock.

(n) Closing of Books. The Corporation shall at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion or transfer of such Preferred Stock or Common Stock, except as may otherwise be required by applicable law.

4. Voting Rights.

(a) Except as otherwise required by law or set forth in this Certificate of Incorporation, the holders of Preferred Stock shall be entitled to notice of any meeting of stockholders and shall vote with the holders of Common Stock as a single class upon any matter submitted to the stockholders for a vote. With respect to all questions as to which, under law, stockholders are required to vote by classes, all Preferred Stock shall vote separately as a single class apart from the Common Stock, and with respect to all questions as to which, under law, stockholders are required to vote by series, each series of Preferred Stock shall vote separately as a single class and series apart from each other series and from the Common Stock. Shares of Common Stock and Preferred Stock shall entitle the holders thereof to the following number of votes on any matter as to which they are entitled to vote:

(i) Holders of Common Stock shall have one vote per share; and

(ii) Holders of Preferred Stock shall have that number of votes per share as is equal to the number of shares of Common Stock (including fractions of a share) into which each such share of Preferred Stock held by such holder could be converted on the date for determination of stockholders entitled to vote at the meeting or on the date of any written consent.

Without limiting the generality of the foregoing, notwithstanding the provisions of Section 242(b)(2) of the Delaware General Corporation Law and subject to any additional consent requirements as may be established in the terms of any series of Preferred Stock, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of Series A Preferred Stock, Series B Preferred Stock and Common Stock, voting as one class in accordance with the provisions of this Section 4.

(b) At all times during which at least 1,400,000 shares of Series A Preferred Stock remain outstanding (such amount subject to equitable adjustment in the event of any stock split, stock dividend, combination, reclassification of shares or other similar event), the holders

of a majority of such outstanding shares of Series A Preferred Stock shall have the exclusive right, voting separately from the Series B Preferred Stock and the Common Stock, to elect one director of the Corporation (such director the "Series A Director"), the designation of such Series A Director to be governed by any voting agreement or similar arrangement to which the holders of Series A Preferred Stock may from time to time be party. Any Series A Director may be removed, with or without cause, and a replacement Series A Director may be elected in his or her stead, at any time only by the affirmative vote of the holders of a majority of the outstanding shares of Series A Preferred Stock.

(c) At all times during which at least 3,200,000 shares of Series B Preferred Stock remain outstanding (such amount subject to equitable adjustment in the event of any stock split, stock dividend, combination, reclassification of shares or other similar event), the holders of a majority of such outstanding shares of Series B Preferred Stock shall have the exclusive right, voting separately from the Series A Preferred Stock and the Common Stock, to elect four directors of the Corporation (each such director a "Series B Director"), the designation of any such Series B Director to be governed by any voting agreement or similar arrangement to which the holders of Series B Preferred Stock may from time to time be party (each Series B Director, Series A Director and other director designated by a holder of Preferred Stock pursuant to any voting agreement or similar agreement to which the Corporation is a party). Any Series B Director may be removed, with or without cause, and a replacement Series B Director may be elected in his or her stead, at any time only by the affirmative vote of the holders of a majority of the outstanding shares of Series B Preferred Stock voting in accordance with any voting agreement or similar arrangement to which the holders of Series B Preferred Stock may from time to time be party. The presence of at least one Series B Director shall be required to establish a quorum for a meeting of the Board of Directors or any committee thereof of which one or more Series B Directors are members.

(d) Notwithstanding any provision of the By-laws of the Corporation to the contrary, the number of directors constituting the entire Board of Directors shall be fixed at nine and may only be changed by the affirmative vote or written consent of (i) the holders of at least a majority of the outstanding shares of Preferred Stock voting or consenting, as the case may be, separately from the Common Stock, and (ii) the holders of a majority of the outstanding shares of Common Stock voting or consenting, as the case may be, separately from the Preferred Stock, or in accordance with the terms of any voting agreement or similar arrangement to which the holders of Preferred Stock may from time to time be party. The Board of Directors shall not delegate any of its powers or duties to any committee of the Board of Directors without the affirmative consent or vote of all Series B Directors.

## 5. Redemption.

(a) At the written election of the holders of at least ten percent (10%) in voting power of the then outstanding Series B Preferred Stock made not less than thirty (30) days prior to each of August 7, 2010, 2011 and 2012, the Corporation shall call for redemption, and shall redeem from each of such holders on a date not later than sixty (60) days after whichever August 7 shall be applicable (each such date a "Redemption Date") up to thirty-three and one-third percent (33 1/3%) of the shares of Series B Preferred Stock held by such holder on August 7, 2010 (the "Maximum Annual Redemption Amount"). In the event that any shares of Series B

Preferred Stock are transferred after the first Redemption Date, the right to elect redemption on any subsequent Redemption Date, up to the pro rata Maximum Annual Redemption Amount applicable thereto, shall automatically be transferred with such shares to the transferee. If at the time of an election made with respect to the last such Redemption Date any electing holder desires to require the Corporation to redeem more than the applicable Maximum Annual Redemption Amount of shares of Series B Preferred Stock, then the written election of such holder shall include the total number of shares of Series B Preferred Stock the holder desires to have redeemed. Shares covered by such election in excess of such holder's Maximum Annual Redemption Amount shall be redeemed by the Corporation on the first anniversary of the last such Redemption Date, up to the Maximum Annual Redemption Amount, and any balance of shares of Series B Preferred Stock as to which redemption has been elected will be redeemed by the Corporation on the second anniversary of such last Redemption Date (each of such anniversaries hereinafter also referred to as a "Redemption Date"). All shares of Series B Preferred Stock to be redeemed as provided above shall be redeemed at a redemption price per share equal to the Purchase Price for the Series B Preferred Stock (which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, distribution, combination of shares, reclassification of shares or other similar event) plus all dividends accrued or declared but unpaid thereon, to and including the date full payment shall be tendered to the holders of the Series B Preferred Stock with respect to each such installment.

(b) Notice of redemption shall be sent by first class mail, postage prepaid, to each holder of record of Series B Preferred Stock to be redeemed, not less than thirty (30) days nor more than sixty (60) days prior to the Redemption Date set forth therein, at the address of such holder as it appears on the books of the Corporation. Such notice shall set forth (i) the date and place of redemption; and (ii) the number of shares to be redeemed and the redemption price, including all dividends declared or accrued but unpaid to the Redemption Date. In the event that a notice of redemption is given under this Section 5(b), the Corporation shall be obligated to redeem the Series B Preferred Stock on the date and in the amounts set forth in the notice. The Corporation, if advised before the close of business on the relevant Redemption Date by written notice from any holder of record of Series B Preferred Stock to be redeemed, shall credit against the number of shares of Series B Preferred Stock required to be redeemed from such holder, and shall not redeem, the number of shares of Series B Preferred Stock which had been converted by such holder on or before such date and which had not previously been credited against any redemption.

(c) If, on or before a Redemption Date, the funds necessary for such redemption shall have been set aside by the Corporation and deposited with a bank or trust company, in trust for the pro rata benefit of the holders of the Series B Preferred Stock that has been called for redemption, then, notwithstanding that any certificates for shares that have been called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall no longer be deemed outstanding from and after such Redemption Date, and all rights of holders of such shares so called for redemption shall forthwith, after such Redemption Date, cease and terminate with respect to such shares, excepting only the right to receive the redemption funds therefor to which they are entitled, but without interest. Any interest accrued on funds so deposited and unclaimed by stockholders entitled thereto shall be paid to such stockholders at the time their respective shares are redeemed or to the Corporation at the time unclaimed amounts are paid to it. In case the holders of Series B Preferred Stock which shall



have been called for redemption shall not, within six (6) years after the final Redemption Date, claim the amounts so deposited with respect to the redemption thereof, any such bank or trust company shall, upon demand, pay over to the Corporation such unclaimed amounts and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof to such holder and such holder shall look only to the Corporation for the payment thereof. Any funds so deposited with a bank or trust company which shall not be required for such redemption by reason of the exercise subsequent to the date of such deposit of the right of conversion of any shares or otherwise shall be returned to the Corporation forthwith.

(d) If the Corporation for any reason fails to redeem any of the shares of Series B Preferred Stock in accordance with this Section 5 on or prior to the Redemption Dates determined in accordance herewith, then, notwithstanding anything to the contrary contained in this Certificate of Incorporation:

(i) The Corporation may not incur any indebtedness for money borrowed (unless the proceeds of such incurrence of indebtedness are used to make all overdue redemptions) or borrow or reborrow any amounts under any lines of credit which it may then have outstanding without the prior written consent of the holders of at least a majority of the then outstanding shares of the Series B Preferred Stock;

(ii) Notwithstanding any provision to the contrary contained herein or in any contract or agreement to which the Corporation is a party, the number of directors constituting the Board of Directors shall be increased by two and the holders of a majority of the outstanding shares of Series B Preferred Stock shall have the right, by written consent or at any special or annual meeting of the stockholders of the Corporation, voting together as a separate class to the exclusion of Series A Preferred Stock and Common Stock, to elect two directors of the Corporation to fill such newly created directorships. In the event that upon such failure to redeem the holders of Series B Preferred Stock do not have the right pursuant to Section 4(c) to elect four directors as Series B Directors, then in addition to and not in lieu of the increase by two in the number of directors and the right to elect the same as provided above, the number of directors constituting the Board of Directors shall be further increased by six and the holders of a majority of the outstanding shares of Series B Preferred Stock shall have the right, by written consent or at any special or annual meeting of the stockholders of the Corporation, voting together as a separate class to the exclusion of Series A Preferred Stock and Common Stock, to elect six directors of the Corporation to fill such newly created directorships. Such rights shall continue until the Corporation is no longer in default of its obligation to redeem shares of Series B Preferred Stock pursuant to this Section 5. Each director elected by the holders of shares of any Series B Preferred Stock pursuant to this Section 5(d)(ii) (each, an "Additional Series B Director") shall continue to serve as such director for the full term for which he or she shall have been elected, notwithstanding that prior to the end of such term a default under this Section 5 shall cease to exist. Any Additional Series B Director may be removed by, and shall not be removed except by, the written consent or vote of the holders of record of at least a majority of the outstanding shares of the Series B Preferred Stock entitled to have originally voted for such director's election, voting together as a separate class to the exclusion of Series A Preferred Stock and Common Stock. As long as a default under this Section 5 shall exist, any vacancy in the office of an Additional Series B Director shall be filled by the vote or written consent of the holders of at least a majority of the outstanding shares of the Series B Preferred Stock entitled to

have originally voted for the removed director's election, voting together as a separate class to the exclusion of Series A Preferred Stock and Common Stock; and

(iii) The holders of Series B Preferred Stock shall be entitled to receive, when and if declared by the Board of Directors, out of funds legally available for the payment of dividends, annual dividends in cash (the "Additional Dividends") at the rate of eight percent (8%) per share per annum of the Purchase Price for the Series B Preferred Stock (as defined below, which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination of shares, reclassification of shares or other similar event), which Additional Dividends are in addition to, and not in lieu of, the dividends on the Series B Preferred Stock provided for in Section 1(b). The Additional Dividends shall accrue from day to day on each share of Series B Preferred Stock from the date on which the Corporation was required by this Section 5 to redeem such share but failed to do so as long as a default under this Section 5 shall exist, whether or not earned or declared, and shall be cumulative.

(e) If the funds of the Corporation legally available for redemption of shares of Series B Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock submitted for redemption, those funds which are legally available will be used to redeem the maximum possible number of whole shares ratably among the holders of such shares. The shares of Series B Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series B Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available.

## 6. Covenants.

(a) As long as any shares of Series A Preferred Stock shall be outstanding, the Corporation shall not, without first having provided the written notice of such proposed action to each holder of outstanding shares of Series A Preferred Stock required by Section 6(c) and having obtained the affirmative vote or written consent of the holders of not less than a majority in voting power of the then outstanding shares of Series A Preferred Stock, with each share of Series A Preferred Stock entitling the holder thereof to that number of votes per share as is equal to the number of shares of Common Stock into which each such share of Series A Preferred Stock held by such holder could then be converted:

(i) alter or change the power, preferences, or special rights of Series A Preferred Stock so as to affect them adversely;

(ii) increase or decrease the par value of Series A Preferred Stock; or

(iii) increase or decrease the aggregate number of authorized shares of Series A Preferred Stock.

(b) As long as any shares of Series B Preferred Stock shall be outstanding, the Corporation shall not, without first having provided the written notice of such proposed action to each holder of outstanding shares of Series B Preferred Stock required by Section 6(c) and

having obtained the affirmative vote or written consent of the holders of not less than a majority in voting power of the then outstanding shares of Series B Preferred Stock, with each share of Series B Preferred Stock entitling the holder thereof to that number of votes per share as is equal to the number of shares of Common Stock into which each such share of Series B Preferred Stock held by such holder could then be converted:

(i) alter or change the power, preferences, or special rights of Series B Preferred Stock so as to affect them adversely;

(ii) increase or decrease the par value of Series B Preferred Stock;

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

(iv) reclassify any capital stock of the Corporation into shares having any preference or priority as to assets superior to or on a parity with any such preference or priority of the Series B Preferred Stock;

(v) create, authorize or issue any other class or classes of stock or series of Common Stock or Preferred Stock or any security convertible into or evidencing the right to purchase shares of any class or series of Common Stock or Preferred Stock or any capital stock of the Corporation senior to or in parity with the Series B Preferred Stock in any respect;

(vi) amend the Corporation's Certificate of Incorporation;

(vii) effect any sale, lease, assignment, transfer, license or other conveyance (other than the grant of a mortgage or security interest in connection with indebtedness for borrowed money) of all or substantially all the assets of the Corporation or any of its subsidiaries, any liquidation, dissolution or winding up of, or any consolidation or merger involving, the Corporation or any of its subsidiaries or any recapitalization of the Corporation, unless the stockholders of the Corporation, before giving effect to any such merger, consolidation, sale, lease or other disposition of assets, beneficially own at least 50% of the outstanding shares of capital stock of, or other equity interests in, the surviving or acquiring corporation or entity, calculated on a fully-diluted basis; or

(viii) pay or declare any dividend or distribution on any shares of Common Stock or Preferred Stock, or apply any of the Corporation's assets to the redemption, retirement, purchase or other acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock or Preferred Stock (except for (1) the repurchase each calendar year of shares of Common Stock having an aggregate purchase price of no more than \$100,000, (2) the repurchase of shares of Common Stock from employees, directors or consultants to the Corporation upon termination of their status as such pursuant to an agreement containing vesting and/or repurchase provisions approved by the Board of Directors (including in such approval all of the Preferred Stock Directors), (3) redemptions pursuant to the redemption rights provided for in Section 5, or (4) any repurchase pursuant to the put rights of the registered holder of the Cephas Warrant, as provided by Section 4 of the Cephas Warrant);

(c) Any other provision of the Corporation's Certificate of Incorporation or By-laws to the contrary notwithstanding, notice of any action specified in Section 6(a) or 6(b) shall be given by the Corporation to each holder of outstanding shares of that series of Preferred Stock whose affirmative vote or written consent is required by Section 6(a) or 6(b), by overnight delivery or first class mail, postage prepaid, addressed to such holder at the last address of such holder as shown by the records of the Corporation, at least ten (10) days before the date on which the books of the Corporation shall close or a record shall be taken with respect to such proposed action, or, if there shall be no such date, at least ten (10) days before the date when such proposed action is scheduled to occur. Any holder of outstanding shares of Preferred Stock may waive any notice required by this Section 6(c) by a written document indicating such waiver, and such holders of Preferred Stock as shall have the right, pursuant to this Section 6, to approve such proposed action may effect a written waiver on behalf of all the holders of Preferred Stock.

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

#### ARTICLE FIVE

The Board of Directors of the corporation shall have the power to adopt, amend, and repeal any or all of the Bylaws of the corporation.

#### ARTICLE SIX

Election of members to the Board of Directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

#### ARTICLE SEVEN

To the fullest extent permitted by the Delaware General Corporation Law, a director or former 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 of the corporation; provided, that the foregoing provision shall not eliminate or limit the liability of a director (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 Title 8 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the liability of directors, 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 amended.

Any repeal or modification of this Article Seven shall not adversely affect any right or protection of a director of the corporation existing hereunder with respect to any act or omission occurring prior to or at the time of such repeal or modification.

The provisions of this Article Seven shall not be deemed to limit or preclude indemnification of a director by the corporation for any liability of a director which has not been eliminated by the provisions of this Article Seven.

#### ARTICLE EIGHT

Except as otherwise expressly provided by this Certificate of Incorporation, the number of directors which shall constitute the Board of Directors of the corporation shall be designated by the Bylaws of the corporation.

#### ARTICLE NINE

Subject to any applicable requirements of law, the books of the corporation may be kept outside the State of Delaware at such location or locations as may be designated by the board of directors of the corporation or in the Bylaws of the corporation.

#### ARTICLE TEN

The corporation shall indemnify each person who at the time is, or shall have been, a director or officer of the corporation and was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred in connection with any such action, suit or proceeding, to the maximum extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended. The foregoing right of indemnification shall in no way be exclusive of any other rights of indemnification to which any such director or officer may be entitled, under any by-law, agreement, vote of directors or stockholders or otherwise. No amendment to or repeal of the provisions of this Article shall deprive a director or officer of the benefit hereof with respect to any act or failure to act occurring prior to such amendment or repeal. In furtherance of and not in limitation of the foregoing, the corporation shall advance expenses, including attorneys' fees, incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by on behalf of such director or officer to repay such advances if it shall be ultimately determined that he is not entitled to be indemnified by the corporation.

#### ARTICLE ELEVEN

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them 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 Section 291 of Title 8 of the

Delaware General Corporation Law or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under Section 279 of Title 8 of the Delaware General Corporation Law, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the corporation, as the case may be, to be summoned in such manner as 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 a 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.

## ARTICLE TWELVE

The corporation elects not be governed by Section 203 of the Delaware General Corporation Law, which pertains to business combinations with interested stockholders.

## ARTICLE THIRTEEN

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

THE UNDERSIGNED, for the purposes of forming a corporation under the laws of the State of Delaware, does make, file and record this Certificate, and does certify that the facts herein stated are true.

DATED this 3<sup>rd</sup>, day of August, 2007.

/s/ David Patteson  
David Patteson  
President and Chief Executive Officer