

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
APPROVA CORPORATION**

Prashanth Viswanath Boccasam hereby certifies that:

ONE: The original Certificate of Incorporation of Approva Corporation was filed with the Secretary of State of the State of Delaware on November 30, 2001 and was amended and restated on January 17, 2002, March 31, 2003, February 4, 2004 and April 12, 2005.

TWO: He is the duly elected and acting President of Approva Corporation, a Delaware corporation.

THREE: The Certificate of Incorporation of this company is hereby amended and restated to read as follows:

I.

The name of this company is APPROVA CORPORATION (the "Company" or the "Corporation").

II.

The address of the registered office of this Company in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, 19901, and the name of the registered agent of this Corporation in the State of Delaware at such address is CBCInnovis, Inc.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("DGCL").

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is Ninety-Six Million (96,000,000) shares, Fifty-Four Million Seven Hundred Thousand (54,700,000) shares of which shall be Common Stock (the "Common Stock") and Forty-One Million Three Hundred Thousand (41,300,000) shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of One-Tenth of One Cent

(\$0.001) per share and the Common Stock shall have a par value of One-Tenth of One Cent (\$0.001) per share.

B. Except as otherwise provided herein, 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 Company (voting together on an as-if-converted basis).

C. Thirteen Million Six Hundred Ninety-Nine Thousand Nine Hundred and Ninety-Eight (13,699,998) shares of the authorized shares of Preferred Stock are hereby designated "Series A Convertible Preferred Stock" (the "Series A Preferred").

D. Eleven Million Six Hundred Seventy-Nine Thousand Two Hundred and Seventy (11,679,270) shares of the authorized shares of Preferred Stock are hereby designated "Series B Convertible Preferred Stock" (the "Series B Preferred").

E. Thirteen Million Six Hundred Twenty Thousand Seven Hundred and Thirty-Two (13,620,732) shares of the authorized shares of Preferred Stock are hereby designated "Series C Convertible Preferred Stock" (the "Series C Preferred").

F. Two Million Three Hundred Thousand (2,300,000) shares of the authorized shares of Preferred Stock are hereby designated "Series D Convertible Preferred Stock" (the "Series D Preferred").

G. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

1. Dividend Rights.

(a) Holders of Preferred Stock, in preference to the holders of Common Stock, shall be entitled to receive, when, as and if declared by the Board of Directors of the Company (the "Board"), but only out of funds that are legally available therefor, non-cumulative cash dividends, on a pari passu basis, at the rate of (i) eight percent (8%) of the Series A Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred plus that amount of cash dividends that have accrued on each share of Series A Preferred from the time of its issuance by the Company to February 4, 2004, which amount is equal to \$0.08197 on each share for the shares of Series A Preferred issued on January 17, 2002, \$0.03397 on each share for the shares of Series A Preferred issued on March 31, 2003 and \$0.02685 on each share for the shares of Series A Preferred issued on June 4, 2003; (ii) eight percent (8%) of the Series B Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred; (iii) eight percent (8%) of the Series C Original Issue Price (as defined below) per annum on each outstanding share of Series C Preferred; and (iv) eight percent (8%) of the Series D Original Issue Price (as defined below) per annum on each outstanding share of Series D Preferred (such number of shares of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred to be adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof).

The right to such dividends on shares of the Preferred Stock shall not be cumulative and no rights shall accrue to holders of the Preferred Stock by reason of the fact that dividends on said shares are or are not declared in any prior year.

(b) The "Series A Original Issue Price" shall be Fifty Cents (\$0.50) per share.

(c) The "Series B Original Issue Price" shall be Seventy-One Cents and Seven Hundredths of a Cent (\$0.7107) per share.

(d) The "Series C Original Issue Price" shall be \$1.24707 per share.

(e) The "Series D Original Issue Price" shall be \$2.05978 per share. References herein to the "Original Issue Price" shall, as applicable, be deemed to refer to the Series A Original Issue Price, the Series B Original Issue Price, the Series C Original Issue Price and/or the Series D Original Issue Price.

(f) So long as any shares of Preferred Stock are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends as set forth in Section 1(a) above on the Preferred Stock shall have been paid or declared and set apart, except for:

(i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost (or the lesser of cost or fair market value) upon termination of services to the Company; or

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares.

(g) In the event dividends are paid on any share of Common Stock, the Company shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(h) The provisions of Sections 1(f) and 1(g) shall not apply to a dividend payable in Common Stock, or any repurchase of any outstanding securities of the Company that is approved by (i) the Board and (ii) the Preferred Stock, which approval may be evidenced by the written or oral approval of the persons serving as the representatives of the Preferred Stock.

2. Voting Rights.

(a) **General Rights.** Each holder of shares of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted (pursuant to Section 5 hereof) immediately after the

close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or as required by law, the Preferred Stock shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

(b) Separate Vote of Preferred Stock. For so long as 4,500,000 shares of Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Preferred Stock after the filing date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least sixty-six and two-thirds percent (66⅔%) of the outstanding Preferred Stock shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Preferred Stock so as to affect them adversely, including by merger, consolidation or otherwise; provided, however, that any amendment of the Certificate of Incorporation or the Bylaws of the Company that alters or changes the powers, preferences or special rights of a series of Preferred Stock so as to affect that series adversely without so affecting all other series of Preferred Stock adversely shall require the vote or written consent of the holders of at least sixty-six and two-thirds percent (66⅔%) of the outstanding shares of such series voting as a separate series;

(ii) Any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock;

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Preferred Stock in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(iv) Any redemption, repurchase, payment of dividends or other distributions with respect to Common Stock (except for acquisitions of Common Stock by the Company permitted by Section 1 hereof);

(v) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 4 hereof);

(vi) Any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock;

- (vii) Any voluntary dissolution or liquidation of the Company; or
- (viii) Any increase or decrease in the authorized number of members of the Company's Board.

(c) Election of Board of Directors.

(i) The holders of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, voting together as a single class, shall be entitled to elect four (4) members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(ii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board, one of whom shall be the Chief Executive Officer of the Company, at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and

(iii) the holders of the Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, voting together as a single class, shall be entitled to elect three (3) members of the Board, who shall be independent industry representatives and approved by the Chief Executive Officer of the Company, at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

3. Liquidation Rights.

Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary:

(a) Before any distribution or payment shall be made to the holders of any Common Stock, Series A Preferred, Series B Preferred or Series C Preferred, the holders of the Series D Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, an amount per share of Series D Preferred equal to fifty percent (50%) of the Series D Original Issue Price plus all declared and unpaid dividends on the Series D Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) for each share of Series D Preferred held by them. If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series D Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series D Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment to the holders of Series D Preferred of the liquidation preference set forth in Section 3(a), above, but before any distribution or payment shall be made to the holders of any Common Stock, Series A Preferred or Series B Preferred, the holders of the Series C Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, an amount per share of Series C Preferred equal to fifty percent (50%) of the Series C Original Issue Price plus all declared and unpaid dividends on the Series C Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) for each share of Series C Preferred held by them. If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series C Preferred of the liquidation preference set forth in this Section 3(b), then such assets (or consideration) shall be distributed among the holders of Series C Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(c) After the payment of the liquidation preference set forth in Sections 3(a) and 3(b) above has been made in full, but before any distribution or payment shall be made to the holders of any Common Stock, the assets of the Company legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Preferred Stock until such time as (i) the holders of Series A Preferred have received an amount per share of Series A Preferred equal to the Series A Original Issue Price plus all accrued and unpaid dividends on the Series A Preferred (as adjusted for any stock, dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), (ii) the holders of Series B Preferred have received an amount per share of Series B Preferred equal to the Series B Original Issue Price plus all declared and unpaid dividends on the Series B Preferred (as adjusted for any stock, dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), (iii) the holders of Series C Preferred have received an amount per share of Series C Preferred equal to fifty percent (50%) of the Series C Original Issue Price (as adjusted for any stock, dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) and (iv) the holders of Series D Preferred have received an amount per share of Series D Preferred equal to fifty percent (50%) of the Series D Original Issue Price (as adjusted for any stock, dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

(d) After the payment of the liquidation preferences set forth in Sections 3(a) 3(b) and 3(c) above have been made in full, the assets of the Company legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock, Series A Preferred, Series B Preferred and Series C Preferred on an as-if-converted to Common Stock basis until such time as (i) the holders of Series A Preferred have received pursuant to Section 3(c) above and this Section 3(d) an aggregate amount per share of Series A Preferred equal to two and one-half (2.5) times the Series A Original Issue Price (as adjusted for any stock, dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), (ii) the holders of Series B Preferred have received pursuant to Section 3(c) above and this Section 3(d) an aggregate amount per share of

Series B Preferred equal to two and one-half (2.5) times the Series B Original Issue Price (as adjusted for any stock, dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof), and (iii) the holders of Series C Preferred have received pursuant to Sections 3(b) and 3(c) above and this Section 3(d) an aggregate amount per share of Series C Preferred equal to two and one-half (2.5) times the Series C Original Issue Price (as adjusted for any stock, dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof); thereafter, the remaining assets of the Company legally available for distribution (or consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock.

4. Asset Transfer or Acquisition Rights.

(a) In the event that the Company is a party to an Acquisition or Asset Transfer (as hereinafter defined), then upon the closing of such Acquisition or Asset Transfer each holder of Preferred Stock shall be entitled to receive, for each share of Preferred Stock then held, out of the proceeds of such Acquisition or Asset Transfer, the greater of (i) the amount of cash, securities or other property to which such holder would be entitled to receive in a liquidation pursuant to Section 3 hereof or (ii) the amount of cash, securities or other property to which such holder would be entitled to receive in a liquidation pursuant to Section 3 hereof if such holder had converted such shares of Preferred Stock into Common Stock immediately prior to the closing of such Acquisition or Asset Transfer.

(b) For the purposes of this Section 4: (i) "Acquisition" shall mean any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (b) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred; *provided* that an Acquisition shall not include (x) any consolidation or merger effected exclusively to change the domicile of the Company, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or indebtedness of the Company is cancelled or converted or a combination thereof; and (ii) "Asset Transfer" shall mean a sale, lease or other disposition of all or substantially all of the assets of the Company or the sale or exclusive license of all or substantially all of the Company's intellectual property.

(c) In any Acquisition or Asset Transfer, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value as determined in good faith by the Board.

5. Conversion Rights.

The holders of the Preferred Stock shall have the following rights with respect to the conversion of the Preferred Stock into shares of Common Stock (the "Conversion Rights"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the applicable "Preferred Stock Conversion Rate" then in effect for the applicable series of Preferred Stock (determined as provided in Section 5(b)) by the number of shares of Preferred Stock being converted.

(b) **Preferred Stock Conversion Rate.** The applicable conversion rate in effect at any time for conversion for a series of Preferred Stock (the "Preferred Stock Conversion Rate") shall be the quotient obtained by dividing the applicable Original Issue Price in effect for such series of Preferred Stock by the applicable "Preferred Stock Conversion Price," calculated as provided in Section 5(c).

(c) **Preferred Stock Conversion Price.** The conversion price for the Series A Preferred shall initially be the Series A Original Issue Price (the "Series A Preferred Conversion Price"). The conversion price for the Series B Preferred shall initially be the Series B Original Issue Price (the "Series B Preferred Conversion Price"). The conversion price for the Series C Preferred shall initially be the Series C Original Issue Price (the "Series C Preferred Conversion Price"). The conversion price for the Series D Preferred shall initially be the Series D Original Issue Price (the "Series D Preferred Conversion Price" and collectively with the Series A Preferred Conversion Price, Series B Preferred Conversion Price and Series C Preferred Conversion Price, the "Preferred Stock Conversion Price"). Each such initial Preferred Stock Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Preferred Stock Conversion Price herein shall mean the Preferred Stock Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any accrued or declared dividends that are unpaid on the shares of Preferred Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Preferred Stock. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) Adjustment for Stock Splits and Combinations. If at any time or from time to time after the date that the first share of Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, as applicable, is issued (such date being the "Original Issue Date" with respect to such series of Preferred Stock) the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the applicable Preferred Stock Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the applicable Preferred Stock Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Common Stock Dividends and Distributions. If at any time or from time to time after the Original Issue Date the Company pays, without consideration, a dividend or other distribution on the Common Stock in additional shares of Common Stock, the applicable Preferred Stock Conversion Price that is then in effect shall be decreased as of the time of such issuance, as provided below:

(i) The applicable Preferred Stock Conversion Price shall be adjusted by multiplying the applicable Preferred Stock Conversion Price then in effect by a fraction:

(A) the numerator of which is the total number of shares of Common Stock deemed outstanding (as determined below in Section 5(i)(ii)) immediately prior to the time of such issuance, and

(B) the denominator of which is the total number of shares of Common Stock deemed outstanding (as determined below in Section 5(i)(ii)) immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the applicable Preferred Stock Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Preferred Stock Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Preferred Stock Conversion Price shall be adjusted pursuant to this Section 5(f) to reflect the actual payment of such dividend or distribution.

(g) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the

conversion of the Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 4 or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Preferred Stock shall then have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(h) Reorganizations, Mergers or Consolidations. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 4 or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 5), as a part of such capital reorganization, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Preferred Stock after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the applicable Preferred Stock Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(i) Sale of Shares Below Preferred Stock Conversion Price.

(i) If at any time or from time to time following the applicable Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section 5(i) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as provided in Section 5(e), 5(f), 5(g) or 5(h) above, for an Effective Price (as defined below) less than the then-effective applicable Preferred Stock Conversion Price (a "Qualifying Dilutive Issuance"), then and in each such case, the then-effective applicable Preferred Stock Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price (calculated to the nearest whole cent) determined by multiplying the applicable Preferred Stock Conversion Price in effect immediately prior to such issuance or sale by a fraction equal to:

(A) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received by the Company for the total number of Additional Shares of Common

Stock so issued would purchase at such then-effective applicable Preferred Stock Conversion Price, and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

(ii) For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the given date and (C) the number of shares of Common Stock issuable upon conversion or exercise of any and all warrants, rights, options or other rights to purchase Common Stock or Convertible Securities (as defined below) outstanding immediately preceding the given date.

(iii) No adjustment shall be made to the applicable Preferred Stock Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section 5(i) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the applicable Preferred Stock Conversion Price.

(iv) For the purpose of making any adjustment required under this Section 5(i), the aggregate consideration received by the Company for any issue or sale of securities (the "Aggregate Consideration") shall: (A) to the extent it consists of cash, be computed as the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed as the fair value of that property as determined in good faith by the Board, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(v) For the purpose of the adjustment required under this Section 5(i), if the Company issues or sells (x) stock or other securities convertible into Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (y) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the applicable Preferred Stock Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount

equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus:

(A) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(B) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); *provided* that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(C) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further*, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

(D) No further adjustment of the applicable Preferred Stock Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the applicable Preferred Stock Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the applicable Preferred Stock Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Preferred Stock.

(vi) For the purpose of making any adjustment to the applicable Preferred Stock Conversion Price of the Preferred Stock required under this Section 5(i), "Additional

Shares of Common Stock” shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(i) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(A) shares of Common Stock issued upon conversion of the Preferred Stock;

(B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights issued after the applicable Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary, pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board (including three persons serving as the representatives of the Preferred Stock);

(C) shares of capital stock issued pursuant to the exercise or conversion of options, warrants or convertible securities outstanding as of the applicable Original Issue Date;

(D) shares of capital stock and/or options, warrants or other capital stock purchase rights, and the capital stock issued pursuant to such options, warrants or other rights issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board (including three persons serving as the representatives of the Preferred Stock);

(E) shares of capital stock and/or options, warrants or other capital stock purchase rights, and the capital stock issued pursuant to such options, warrants or other rights issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board (including three persons serving as the representatives of the Preferred Stock);

(F) any equity securities issued in connection with strategic transactions involving the Company and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements; *provided* that the issuance of shares therein has been approved by the Company’s Board (including three persons serving as the representatives designated by the Preferred Stock);

(G) shares of Common Stock issued or issuable as a dividend or distribution on the Preferred Stock; and

(H) shares of Common Stock issued upon a Qualified IPO (as defined below).

References to Common Stock in the subsections of this clause (vi) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 5(i). The “Effective Price” of Additional Shares of Common Stock shall mean the quotient

determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 5(i), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 5(i), for such Additional Shares of Common Stock.

(vii) In the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance (the "First Dilutive Issuance"), then in the event that the Company issues or sells, or is deemed to have issued or sold, Additional Shares of Common Stock in a Qualifying Dilutive Issuance other than the First Dilutive Issuance (a "Subsequent Dilutive Issuance") pursuant to the same instruments as the First Dilutive Issuance, then and in each such case upon a Subsequent Dilutive Issuance the applicable Preferred Stock Conversion Price shall be reduced to the applicable Preferred Stock Conversion Price that would have been in effect had the First Dilutive Issuance and each Subsequent Dilutive Issuance all occurred on the closing date of the First Dilutive Issuance.

(j) Certificate of Adjustment. In each case of an adjustment or readjustment of the applicable Preferred Stock Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the applicable Preferred Stock, if the applicable Preferred Stock is then convertible pursuant to this Section 5, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of applicable Preferred Stock at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the applicable Preferred Stock Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the applicable Preferred Stock.

(k) Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 4) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 4), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Preferred Stock at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of sixty-six and two-thirds percent (66⅔%) of the outstanding Preferred Stock) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall

be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(l) Automatic Conversion.

(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective applicable Preferred Stock Conversion Price, (A) at any time upon the affirmative election of the holders of at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the then outstanding shares of the Preferred Stock, or (B) immediately upon the closing of a firmly 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 Company in which (i) the per share offering price is not less than \$3.08967 adjusted for stock splits, dividends, recapitalizations and the like after the filing date hereof), and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$25,000,000 (a "Qualified IPO").

(ii) Upon the occurrence of either of the events specified in Section 5(l)(i) above, 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 Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its 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 Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any accrued or declared dividends that are unpaid shall be paid in accordance with the provisions of Section 5(d).

(m) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company 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 the Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Company 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.

(o) **Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.

(q) **No Dilution or Impairment.** Without the consent of the holders of then outstanding Preferred Stock as may be required under Section 2(b), the Company shall not amend its Amended and Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

6. Redemption.

(a) The Company shall be obligated to redeem the Preferred Stock as follows:

(i) The holders of at least sixty-six and two-thirds percent (66⅔%) of the then outstanding shares of Series A Preferred, Series B Preferred, Series C Preferred and Series D Preferred, voting together as a single class, may require the Company, to the extent it may lawfully do so, to redeem the Preferred Stock in three (3) annual installments beginning not prior to

the fifth anniversary of the Original Issue Date of the Series D Preferred, and ending on the date two (2) years from such first redemption date (each a "Redemption Date"). The Company shall effect such redemptions on the applicable Redemption Date by paying in cash in exchange for the shares of Preferred Stock to be redeemed a sum equal to the applicable Original Issue Price per share of each series of Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) plus accrued or declared dividends that are unpaid with respect to such shares. The total amount to be paid for the Preferred Stock is hereinafter referred to as the "Redemption Price." The number of shares of Preferred Stock that the Company shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Preferred Stock outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 6(a) shall be redeemed from each holder of Preferred Stock on a pro rata basis, based on the number of shares then held.

(ii) At least thirty (30) days but no more than sixty (60) days prior to the first Redemption Date, the Company shall send a notice (a "Redemption Notice") to all holders of Preferred Stock to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date (including, if applicable, those to be redeemed at the option of the Company), then it shall so notify such holders and shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to the Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section 6(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 5 hereof no later than the fifth (5th) day preceding the applicable Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section 6(b) remaining unclaimed at the expiration of one (1) year following such Redemption Date shall be returned to the Company promptly upon its written request.

(c) On or after each such Redemption Date, each holder of shares of Preferred Stock to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price 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 such certificates are redeemed, a new

certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided* that in the event that shares of Preferred Stock are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Preferred Stock shall remain outstanding and shall be entitled to all of the rights and preferences provided herein until redeemed.

(d) In the event of a call for redemption of any shares of Preferred Stock, the Conversion Rights (as defined in Section 5) for such Preferred Stock shall terminate as to the shares designated for redemption at the close of business on the applicable Redemption Date, unless default is made in payment of the Redemption Price.

7. No Reissuance of Preferred Stock.

No shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

V.

A. The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

B. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

VI.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further *provided* that:

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Amended and Restated Certificate of Incorporation.

B. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then

outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

C. The directors of the Company need not be elected by written ballot.

* * * *

FOUR: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of the Company.

FIVE: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, APPROVA CORPORATION has caused this Amended and Restated Certificate of Incorporation to be signed by its President this 1st day of March, 2007.

APPROVA CORPORATION

By: /s/ Prashanth Viswanath Boccasam
Prashanth Viswanath Boccasam
President and Chief Executive Officer