

State of Delaware
Secretary of State
Division of Corporations
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**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
APPRION, INC.**

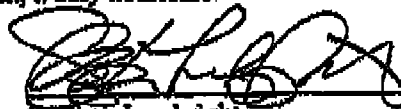
Apprion, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), certifies that:

A. The name of the Corporation is Apprion, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 23, 2005.

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

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

IN WITNESS WHEREOF, Apprion, Inc. has caused the Amended and Restated Certificate of Incorporation to be signed by Stephen Lambright, a duly authorized officer of the Corporation, on August 2, 2007.



Stephen Lambright
Chief Executive Officer and President

EXHIBIT A**ARTICLE I**

The name of the Corporation is Apprion, Inc. (the "**Corporation**").

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

The total number of shares of stock that the corporation shall have authority to issue is 93,946,304, consisting of 57,500,000 shares of Common Stock, \$0.001 par value per share, and 36,446,304 shares of Preferred Stock, \$0.001 par value per share. The first Series of Preferred Stock shall be designated "**Series A Preferred Stock**" and shall consist of 16,446,304 shares. The second Series of Preferred Stock shall be designated "**Series B Preferred Stock**" and shall consist of 20,000,000 shares.

ARTICLE V

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

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

(a) "**Change of Control**" shall mean the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity or the entity controlling such surviving entity), as a result of shares in the Corporation held by such holders prior to such transaction, more than fifty percent (50%) of the total voting power represented by the voting securities of the Corporation, such surviving entity or the entity that controls or such surviving entity outstanding immediately after such transaction or series of transactions.

(b) "**Conversion Price**" shall mean \$0.4560295 per share for the Series A, and \$0.69146 per share for the Series B Preferred Stock (subject to adjustment from time to time for

Recapitalizations with respect to the Series A Preferred Stock and Series B Preferred Stock and as otherwise set forth elsewhere herein).

(c) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(d) "Distribution" shall mean the transfer of cash or other property without fair consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of such repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, (iv) shares withholding as payment of the exercise price or in satisfaction of any tax obligations in connection with the exercise of any Option issued pursuant to any equity incentive or similar incentive plan and held by then current or former employees, officers, directors or consultants of the Corporation or (v) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Common Stock and Preferred Stock of the Corporation voting as separate classes.

(e) "Dividend Rate" shall mean an annual rate of \$0.0364824 per share for the Series A Preferred Stock, and an annual rate of \$0.0553168 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations with respect to the Series A Preferred Stock and Series B Preferred Stock and as otherwise set forth elsewhere herein).

(f) "Liquidation Event" shall be deemed to be occasioned by, or to include (i) a Change of Control, (ii) a Sale of Assets, or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(g) "Liquidation Preference" shall mean \$0.4560295 per share for the Series A Preferred Stock and \$0.69146 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations with respect to the Series A Preferred Stock and Series B Preferred Stock and as otherwise set forth elsewhere herein).

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

(i) "Original Issue Price" shall mean \$0.4560295 per share for the Series A Preferred Stock and \$0.69146 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations with respect to the Series A Preferred Stock and Series B Preferred Stock and as otherwise set forth elsewhere herein).

(j) "Preferred Stock" shall mean the Series A Preferred Stock and Series B Preferred Stock.

(k) "Recapitalization" shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(l) "Series A Original Issue Date" means December 14, 2005.

(m) "Series B Original Issue Date" means the first date upon which the Corporation shall issue a share of Series B Preferred.

(n) "Sale of Assets" shall mean a sale, lease, license (other than in the ordinary course of business), transfer, conveyance or other disposition (a "Sale"), in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets (including material intellectual property) of the Corporation and its subsidiaries taken as a whole, except where such Sale is to a wholly owned subsidiary of the Corporation.

2. Dividends.

(a) Series B Preferred Stock. In any calendar year, the holders of outstanding shares of Series B Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors of the Corporation (the "Board," or "Board of Directors"), out of any assets at the time legally available therefor, at the Dividend Rate for the Series B Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on the Series A Preferred or the Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Series A Preferred Stock or Common Stock until all declared dividends on the Series B Preferred Stock have been paid or set aside for payment to the Series B Preferred Stock holders. The right to receive dividends on shares of Series B Preferred Stock shall be cumulative, and shall accrue to holders of Series B Preferred Stock as of the Series B Original Issue Date. No dividends will be paid on Series A Preferred and/or Common Stock until equal dividends have been declared and paid on Series B Preferred.

(b) Series A Preferred Stock. In any calendar year and subject to the prior dividend rights of the Series B Preferred Stock, the holders of outstanding shares of Series A Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board, out of any assets at the time legally available therefor, at the Dividend Rate applicable to the Series A Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on the Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock until all declared dividends on the Series A Preferred Stock have been paid or set aside for payment to the Series A Preferred Stock holders. The right to receive dividends on shares of Series A Preferred Stock shall be cumulative, and shall accrue to holders of Series A Preferred Stock as of the Series A Original Issue Date.

(c) Ordinary Stock. Dividends may be paid on the Common Stock when, as and if declared by the Board of Directors, subject to the prior dividend rights of the Series A Preferred Stock and Series B Preferred Stock and to Section 7 below.

(d) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors; provided, however, if the Board is unable to agree upon such value, then the value shall be the value determined by an independent third party selected by the approval (not to be unreasonably withheld or delayed) of the Board and the reasonable costs of the independent third party are to be paid by the Corporation (the "Valuation Approval"); provided further, however, that any securities to be delivered to the holders of Preferred Stock or Common Stock shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the date of Distribution;

(2) If the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the date of Distribution; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors, subject to the Valuation Approval provided in this Section 2(d) above, if the Board is unable to agree upon such value.

(ii) The method of valuation of securities subject to investment letters or other restrictions on free marketability shall be to make an appropriate discount from the market value, determined as provided in paragraphs (i)(1), (i)(2) and (i)(3) above, to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors, subject to the Valuation Approval provided in this Section 2(d) above, if the Board is unable to agree upon such value.

For the purposes of this Section 2(d), "trading day" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "closing prices" or "closing bid prices" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(e) Consent to Certain Distributions. As authorized by Section 402.5(c) of the California Corporations Code, if Section 502 or Section 503 of the California Corporations Code is applicable to a payment made by the Corporation then such applicable section or sections shall not

apply if such payment is a payment made by the Corporation in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchases of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, (iv) shares withholding as payment of the exercise price or in satisfaction of any tax obligations in connection with the exercise of any Option issued pursuant to any equity incentive or similar incentive plan and held by then current or former employees, officers, directors or consultants of the Corporation or, (v) any other repurchase or redemption of capital stock of the Corporation approved by the holders of Preferred Stock of the Corporation.

3. Liquidation Rights.

(a) Liquidation Preference for Series B Preferred Stock. In the event of any Liquidation Event, the holders of the Series B Preferred Stock will be entitled to receive, prior and in preference to any Distribution of any assets of the Corporation to the holders of the Series A Preferred Stock and Common Stock by reason of their ownership of such stock, an amount per share of Series B Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series B Preferred Stock and (ii) accumulated but unpaid dividends (if any) on such share of Series B Preferred Stock. If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series B Preferred Stock are insufficient to permit the payment to such holders of the full amounts of Series B Preferred Stock specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed *pro rata* among the holders of the Series B Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Liquidation Preference for Series A Preferred Stock. In the event of any Liquidation Event and subject to full payment to the holders of Series B Preferred Stock of the amounts payable to such holders pursuant to Section 3(a) above, the holders of the Series A Preferred Stock will be entitled to receive, prior and in preference to any Distribution of any assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share of Series A Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series A Preferred Stock and (ii) accumulated but unpaid dividends (if any) on such share of Series A Preferred Stock. If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of the full amounts of Series A Preferred Stock specified in this Section 3(b), then the entire assets of the Corporation legally available for distribution shall be distributed *pro rata* among the holders of the Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(b).

(c) Remaining Assets. After the payment to the holders of Preferred Stock of the full preferential amounts specified above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed with equal priority and *pro rata*

among the holders of the Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them, with the shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Rate.

(d) Cap on Liquidation Rights. Notwithstanding the foregoing, if the aggregate distributions with respect to shares of Series A Preferred Stock or Series B Preferred Stock in connection with a Liquidation Event would exceed an amount equal to three (3) times the Original Issue Price applicable to such shares of Series A Preferred Stock or Series B Preferred Stock (assuming the holders of Preferred Stock do not receive the Liquidation Preference but receive only distributions with the holders of Common Stock (on an as-converted basis)), then the holders of the Series A Preferred Stock or Series B Preferred Stock, as applicable, shall receive no Liquidation Preference.

(e) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(f) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in accordance with the same procedures as set forth in Section 2(d) above.

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

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

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale of the Corporation's Common Stock, provided that the offering price per share is not less than \$2.76584 (as adjusted for Recapitalizations) and the aggregate gross proceeds to the Corporation are not less than \$25,000,000 ("Qualifying IPO") or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of at least sixty-six and two-thirds percent (66 2/3%) of the Preferred Stock then outstanding,

or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "Automatic Conversion Event").

(c) Special Mandatory Conversion. In the event:

(i) the Corporation proposes to issue any Additional Shares of Common ("Subsequent Financing"); and

(ii) the holders of Series A Preferred Stock have a contractual right to participate in such Subsequent Financing (such holders, the "Holders"); and

(iii) the Corporation delivers a notice to each Holder ("Financing Notice") (1) stating the Corporation's bona fide intention to consummate the Subsequent Financing and the aggregate dollar amount to be sold in the Subsequent Financing; (2) indicating the number of Additional Shares of Common to be offered; (3) indicating the proposed price and terms of such securities; (4) identifying the Holder's Pro Rata Share (as defined below); and (5) indicating the period of time in which the Holder must provide written notice to the Corporation of such Holder's intent and agreement to purchase such Holder's Pro Rata Share on the price and terms set forth in the Financing Notice ("Participation Notice"); and

(iv) a Holder either fails to (1) provide a Participation Notice within the period of time set forth in the Financing Notice, or (2) acquire at least its Pro Rata Share (a "Non-Participating Holder"), then each Non-Participating Holder's shares of Series A Preferred Stock shall automatically and without further action on the part of such holder be converted, effective upon, subject to and concurrently with the consummation of the Subsequent Financing, into shares of Common Stock of the Corporation at the Conversion Rate applicable to such share of Series A Preferred Stock prior to the Subsequent Financing. For purposes of this Section 4(c), each Holder's Pro Rata Share shall be an amount determined by multiplying the aggregate dollar amount proposed to be sold in the Subsequent Financing as set forth in the Financing Notice (without regard to the aggregate dollar amount actually received by the Corporation in the Subsequent Financing) by a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock then held by such holder and the denominator of which shall be the total number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock then outstanding. For purposes of calculating a holder's Pro Rata Share, the applicable number of shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock shall be calculated based on number of shares of Series A Preferred Stock outstanding immediately following the closing of the Subsequent Financing, assuming full participation of all Holders.

(d) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and

to receive certificates therefor, he shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this Section 4(e), "Additional Shares of Common" shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(e)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated

Certificate of Incorporation (this "Restated Certificate"), other than issuances or deemed issuances of:

(1) shares of Common Stock issued or issuable to officers, directors and employees of, or consultants to, the Corporation pursuant to stock grants, option plans, purchase plans or other employee stock incentive programs or employee stock incentive arrangements approved by the Board of Directors or upon exercise of options or warrants granted to such parties pursuant to any such plan or arrangement;

(2) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to Sections 4(f), 4(g) or 4(h) hereof;

(3) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction or similar transactions outstanding as of the Series B Original Issue Date or approved by the Board of Directors, including at least one of the Series A Directors (as defined below) and the Series B Director (as defined below), if any in either case;

(4) shares of Common Stock issued or issuable upon conversion of the Preferred Stock;

(5) shares of Common Stock issued in a registered public offering under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(6) shares of Common Stock issued in strategic partnership transactions, including in connection with sponsored research collaboration, technology license, development, OEM, marketing or similar arrangements or partnerships, on such terms approved by the Board of Directors, including at least one of the Series A Directors and the Series B Director, if any in either case; and

(7) shares of Common Stock issued or issuable in any other transaction determined by the holders of at least a majority of the then-outstanding shares of Preferred Stock and Common Stock (voting together as a single class on an as converted basis) not to be included in the definition of Additional Shares of Common.

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

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any

class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

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

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

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

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

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

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

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

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 4(e)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of the Series A Preferred Stock or Series B Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the Series A Preferred Stock or Series B Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of this Section 4(e)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

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

(1) Cash and Property. Such consideration shall:

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

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

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

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to Section 4(e)(iii) shall be determined by dividing: (a) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (b) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

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

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

(h) No Impairment. The Corporation will not through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, intentionally avoid or intentionally seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be reasonably necessary in order to protect the Conversion Rights of the holders of Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 4(h) shall prohibit the Corporation from amending its Restated Certificate, subject to any requirement herein, by law or under contract requiring a vote by the Common Stock as a separate class or consummating a Recapitalization with the requisite consent of its stockholders and the Board.

(i) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above ("Liquidation Rights"), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

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

(k) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of the majority of the outstanding shares of such series either before or after the issuance causing the adjustment.

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

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

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

(iii) to approve a Liquidation Event or to enter into any transaction deemed to be a Liquidation Event;

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of a majority of the Preferred Stock, voting together as a single class.

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

5. Voting.

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

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

(c) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation (the "Bylaws"). Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all

shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(d) Election of Directors. The Board of Directors shall consist of six (6) members. The holders of Series A Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors ("Series A Directors"). The holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors ("Series B Director"). The holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. Any additional members of the Corporation's Board of Directors shall be elected by the holders of Common Stock and Preferred Stock, voting together as a single class. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors elected by the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy.

(e) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the stock of the Corporation.

(f) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. In the event the Corporation (i) is to issue (or, pursuant to paragraph 4(e)(iii), will be deemed to be issued) Additional Shares of Common as approved by the Corporation's Board of Directors, or (ii) is to issue Common Stock or shares convertible into Common Stock to acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

(g) California Section 2115. So long as Section 2115 of the California General Corporation Law purports to make Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law applicable to the Corporation, the Corporation's stockholders shall have the right to cumulate their votes in connection with the election of directors as provided by Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law.

6. Redemption.

(a) Series B and Series A Preferred Stock

(i) At any time commencing five (5) years after the Series B Original Issue Date, and at the election of the holders of at least a majority of the then outstanding shares of

Preferred Stock, the Corporation shall redeem, out of funds legally available therefor, all (but not less than all) outstanding shares of Preferred Stock which have not been converted into Common Stock pursuant to Section 4 hereof, in three (3) equal annual installments (the date of each such installment, a "Redemption Date"). The Corporation shall redeem the shares of Preferred Stock by paying in cash an amount per share equal to the Original Issue Price for such series of Preferred Stock, plus an amount equal to all declared and unpaid dividends thereon, whether or not earned (the "Redemption Price"). The number of shares of each of the Series A Preferred Stock and Series B Preferred Stock that the Corporation shall be required under this Section 6 to redeem on any one (1) Redemption Date shall be equal to the amount determined by dividing the aggregate number of shares of each such series outstanding prior to the first Redemption Date by three (3). If the funds legally available for redemption of the Preferred Stock shall be insufficient to permit the payment to such holders of the full respective Redemption Prices, the Corporation shall effect such redemption *pro rata* among the holders of the Series A Preferred Stock and Series B Preferred Stock so that each holder of Series A Preferred Stock and Series B Preferred Stock shall receive a redemption payment equal to a fraction of the aggregate amount available for redemption, the numerator of which is the number of shares of Series A Preferred Stock and Series B Preferred Stock held by such holder with each number multiplied by the Redemption Price of each share of Series A Preferred Stock and Series B Preferred Stock held by such holder, and the denominator of which is the number of shares of Series A Preferred Stock and Series B Preferred Stock outstanding multiplied by the Redemption Price of each such outstanding share of Series A Preferred Stock and Series B Preferred Stock. To the extent that the Company's financial position does not permit redemption under applicable corporate laws, any shares required to be redeemed shall be redeemed at such times as the Company is legally able to do so.

(b) Any redemption effected pursuant to Section 6(a) shall be made on a *pro rata* basis among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the shares of Series A Preferred Stock and Series B Preferred Stock then held by them.

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

(d) From and after the applicable Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred Stock and Series B Preferred Stock designated for redemption in the Redemption Notice as holders of Series A Preferred Stock and Series B Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to the shares designated for redemption on such date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock and Series B Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock and Series B Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series A Preferred Stock and Series B Preferred Stock. The shares of Series A Preferred Stock and Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series A Preferred Stock and Series B Preferred Stock such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date, but which it has not redeemed.

(e) On or prior to each Redemption Date, the Corporation may deposit the Redemption Price of all shares of Series A Preferred Stock and Series B Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000, as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered a share certificate to the Corporation pursuant to Section 6(c) above. As of the Redemption Date, the deposit shall constitute full payment of the shares to their holders, and from and after the Redemption Date the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this Section 6(e) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 hereof prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this Section 6(e) remaining unclaimed at the expiration of two (2) years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

7. Amendments and Changes.

(a) Approval by Holders of Series A Preferred Stock. As long as at least 2,700,000 shares of the Series A Preferred Stock shall be issued and outstanding, the Corporation

shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of the Series A Preferred Stock:

(i) amend, alter or repeal any provision of this Restated Certificate (including pursuant to a merger) or waive any provision of this Restated Certificate or the Bylaws relative to the Series A Preferred Stock if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series A Preferred Stock;

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

(iii) approve any action that causes an adverse change to the rights, preferences, and privileges of the Series A Preferred Stock;

(iv) increase or decrease (other than for decreases resulting from conversion of the Series A Preferred Stock) the authorized number of shares of Series A Preferred Stock; or

(v) amend this Section 7(a).

(b) Approval by Holders of Series B Preferred Stock. As long as at least 2,700,000 shares of the Series B Preferred Stock shall be issued and outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of the Series B Preferred Stock:

(i) amend, alter or repeal any provision of this Restated Certificate (including pursuant to a merger) or waive any provision of this Restated Certificate or the Bylaws relative to the Series B Preferred Stock if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series B Preferred Stock;

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

(iii) approve any action that causes an adverse change to the rights, preferences, and privileges of the Series B Preferred Stock;

(iv) increase or decrease (other than for decreases resulting from conversion of the Series A Preferred Stock) the authorized number of shares of Series B Preferred Stock; or

(v) amend this Section 7(b).

(c) Approval by Holders of Preferred Stock. As long as at least 5,500,000 shares of the Preferred Stock shall be issued and outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of more than 50% of the outstanding shares of the Preferred Stock:

(i) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Common Stock

(ii) approve or take any action that results in the redemption of any shares of Common Stock (other than pursuant to equity incentive agreements with service providers giving the Corporation the right to repurchase shares at the original issue price of such shares upon termination of status as a service provider);

(iii) voluntarily enter into Liquidation event or Recapitalization.

(iv) encumber or grant a security interest in all or substantially all of the assets of the Corporation in connection with any indebtedness of the Corporation, unless such transaction is also earlier approved by the Board, including the at least one of the Series A Directors and the Series B Director, if in either case any;

(v) approve or take any action that results in a significant change in the business of the Corporation as conducted as of the Series B Original Issue Date;

(vi) acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity (except for an amount of consideration which is less than ten percent (10%) of the Corporation's consolidated net worth as of the end of the fiscal quarter prior to such acquisition, merger or purchase);

(vii) hire any individual with an annual compensation in excess of \$170,000, unless such hire and compensation is earlier approved by the Board, including at least one of the Series A Directors and the Series B Director, if in either case any;

(viii) approve or make any loan or advance to, or acquire any securities of, any entity unless such entity is wholly owned by the Corporation;

(ix) declare or pay any Distribution with respect to the Common Stock of the Corporation;

(x) increase the number of shares authorized for issuance under any existing stock or option plan or create any new stock or option plan, unless such increase or authorization is approved by the Board, including the at least one of the Series A Directors and the Series B Director, if in either case any;

(xi) approve or take any action that constitutes a transaction or relationship between the Corporation and any officer or director of the Corporation or any stockholder owning more than ten percent (10%) of the outstanding Common Stock of the Corporation on an as-converted basis;

(xii) incur any indebtedness of the Corporation in excess of \$250,000, unless such transaction is approved by the Board, including at least one of the Series A Directors and the Series B Director, if in either case any;

(xiii) establish or alter in any material respect the compensation of any executive officer of the Corporation; or

(xiv) amend this Section 7(c).

8. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4, redeemed pursuant to Section 6 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by the Corporation.

9. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

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

ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated in the Bylaws.

ARTICLE IX

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

ARTICLE X

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

2. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a

director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

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

ARTICLE XI

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

ARTICLE XII

The Corporation renounces, to the fullest extent permitted under applicable law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

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