

**FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
AVEDRO, INC.**

**(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)**

AVEDRO, INC., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is Avedro, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on November 6, 2002 under the name ThermalVision, Inc.

SECOND: That this corporation filed with the Secretary of State of the State of Delaware its original Certificate of Incorporation on November 6, 2002 (the “*Original Certificate*”). The Original Certificate was amended and restated by the Amended and Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on January 21, 2003, the Second Amended and Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on October 13, 2005, the Third Amended and Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on January 17, 2008, and the Fourth Amended and Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on April 29, 2009 (the “*Fourth Restated Certificate*”).

THIRD: That the Board of Directors duly adopted resolutions proposing to amend and restate the Fourth Restated Certificate, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Fourth Restated Certificate be amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is Avedro, Inc.

ARTICLE II

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

*State of Delaware
Secretary of State
Division of Corporations
Delivered 01:55 PM 06/30/2011
FILED 01:47 PM 06/30/2011
SRV 110781664 - 3589158 FILE*

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

A. Authorization of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, common stock and preferred stock. The total number of shares that this corporation is authorized to issue is one hundred thirty three million nine hundred forty four thousand eight hundred ninety (133,944,890). The total number of shares of common stock authorized to be issued is seventy four million one hundred thirteen thousand six hundred ninety (74,113,690), par value \$0.00001 per share (the “*Common Stock*”). The total number of shares of preferred stock authorized to be issued is fifty nine million eight hundred thirty one thousand two hundred (59,831,200), par value \$0.00001 per share (the “*Preferred Stock*”), of which two million seven hundred forty three thousand (2,743,000) are designated as “*Series A Preferred Stock*,” twelve million one hundred fifty four thousand seven hundred thirty (12,154,730) are designated as “*Series A-1 Preferred Stock*” (the Series A-1 Preferred Stock together with the Series A Preferred Stock, the “*Series A/A-1 Preferred Stock*”), eleven million five hundred eighty four thousand nine hundred thirty eight (11,584,938) are designated as “*Series B Preferred Stock*,” and thirty three million three hundred forty eight thousand five hundred thirty two (33,348,532) are designated as “*Series C Preferred Stock*.”

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

1. Dividend Provisions.

(a) Series C Preferred Stock. The holders of outstanding shares of Series C Preferred Stock shall be entitled to receive dividends out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Series B Preferred Stock, the Series A/A-1 Preferred Stock or the Common Stock of this corporation, at the applicable Dividend Rate (as defined below), payable when, as and if declared by the Board of Directors. No dividends or distributions shall be declared or paid on the Series B Preferred Stock, the Series A/A-1 Preferred Stock or the Common Stock of this corporation unless a dividend or distribution is first declared and paid on the Series C Preferred Stock in accordance with the Dividend Rate provided herein. Such dividends shall not be cumulative. The holders of the outstanding Series C Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least seventy-three percent (73%) of the shares of Series C Preferred Stock then outstanding (voting together as a separate class, and on an as-converted basis) (the “*Requisite Series C Holders*”).

(b) **Series B Preferred Stock.** After the payment or setting aside for payment of the dividends described in subsection 1(a), the holders of outstanding shares of Series B Preferred Stock shall be entitled to receive dividends out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Series A/A-1 Preferred Stock or Common Stock of this corporation, at the applicable Dividend Rate, payable when, as and if declared by the Board of Directors. No dividends or distributions shall be declared or paid on the Series A/A-1 Preferred Stock or Common Stock of this corporation unless a dividend or distribution is first declared and paid on the Series C Preferred Stock and the Series B Preferred Stock in accordance with the Dividend Rate provided herein. Such dividends shall not be cumulative. The holders of the outstanding Series B Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least 66.66% of the shares of Series B Preferred Stock then outstanding (voting together as a separate class, and on an as-converted basis) (the “**Requisite Series B Holders**”).

(c) **Series A/A-1 Preferred Stock.** After the payment or setting aside for payment of the dividends described in subsections 1(a) and 1(b), the holders of outstanding shares of Series A/A-1 Preferred Stock, on a pari passu basis, shall be entitled to receive dividends out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock of this corporation, at the applicable Dividend Rate, payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. The holders of the outstanding Series A-1 Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least a majority of the shares of Series A-1 Preferred Stock then outstanding (voting together as a separate class, and on an as-converted basis). The holders of the outstanding Series A Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding (voting together as a separate class, and on an as-converted basis).

For purposes of subsections 1(a), 1(b) and 1(c), “**Dividend Rate**” shall mean (a) \$0.07039 per annum for each share of Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), (b) \$0.06905 per annum for each share of Series B Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), (c) \$0.05265 per annum for each share of Series A-1 Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) and (d) \$0.03091 per annum for each share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like); provided, however, that notwithstanding anything to the contrary contained herein, in no event shall any dividends be declared, set aside, and/or paid on any series of Preferred Stock (i) for any period prior to the Filing Date, or (ii) in any given year for more than one trailing twelve month period.

(d) Additional Dividends. Only after payment of such dividends as provided in subsections 1(a), 1(b) and 1(c) above, any additional dividends or distributions shall be distributed among all holders of Common Stock, Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock were converted to Common Stock at the then-effective Conversion Rate (as defined below) applicable to each such series of Preferred Stock.

2. Liquidation Rights.

(a) Liquidation Preference on the Series C Preferred Stock. In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event (the “*Proceeds*”) to the holders of Series B Preferred Stock, the holders of Series A/A-1 Preferred Stock and the holders of Common Stock by reason of their ownership of such stock, an amount per share for each share of Series C Preferred Stock equal to the sum of (i) the Original Issue Price (as defined below) applicable to the Series C Preferred Stock, plus (ii) declared but unpaid dividends (if any) on the Series C Preferred Stock. If, upon the occurrence of such Liquidation Event, the Proceeds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full amounts specified in this subsection 2(a), then the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection 2(a).

(b) Liquidation Preference on the Series B Preferred Stock. In the event of any Liquidation Event, either voluntary or involuntary, the holders of Series B Preferred Stock shall be entitled to receive, following the payment in full of all amounts payable on the Series C Preferred Stock pursuant to subsection 2(a), but prior and in preference to any distribution of the Proceeds to the holders of Series A/A-1 Preferred Stock and the holders of Common Stock by reason of their ownership of such stock, an amount per share for each share of Series B Preferred Stock equal to the sum of (i) the Original Issue Price applicable to the Series B Preferred Stock, plus (ii) declared but unpaid dividends (if any) on the Series B Preferred Stock. If, upon the occurrence of such Liquidation Event, the Proceeds thus distributed among the holders of the Series B Preferred Stock, following the payment in full of all amounts payable on the Series C Preferred Stock pursuant to subsection 2(a), shall be insufficient to permit the payment to such holders of the full amounts specified in this subsection 2(b), then the entire remaining Proceeds legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection 2(b).

(c) Liquidation Preference on the Series A/A-1 Preferred Stock. In the event of any Liquidation Event, either voluntary or involuntary, the holders of Series A/A-1 Preferred Stock shall be entitled to receive, following the payment in full of all amounts payable on the Series C Preferred Stock pursuant to subsection 2(a) and the Series B Preferred Stock pursuant to subsection 2(b), but prior and in preference to any distribution of the Proceeds

to the holders of Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A/A-1 Preferred Stock equal to the sum of (i) the Original Issue Price applicable to each series within the Series A/A-1 Preferred Stock, plus (ii) declared but unpaid dividends (if any) on each series within the Series A/A-1 Preferred Stock. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of the Series A/A-1 Preferred Stock, following the payment in full of all amounts payable on the Series C Preferred Stock pursuant to subsection 2(a) and the Series B Preferred Stock pursuant to subsection 2(b), shall be insufficient to permit the payment to such holders of the full amounts specified in this subsection 2(c), then the entire remaining Proceeds legally available for distribution shall be distributed ratably among the holders of the Series A/A-1 Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection 2(c).

(d) Distribution of Remaining Proceeds. Upon completion of the distributions required by subsections 2(a), 2(b) and 2(c) of this Section 2, all of the remaining Proceeds available for distribution to stockholders shall be distributed among the holders of Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each such stockholder (assuming for purposes of such calculation full conversion of all Preferred Stock immediately prior to such Liquidation Event).

For purposes of this Fifth Amended and Restated Certificate of Incorporation, “**Original Issue Price**” shall mean (a) \$0.87989 per share for each share of the Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), (b) \$0.86319 per share for each share of the Series B Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), (c) \$0.65818 per share for each share of the Series A-1 Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock) and (d) \$0.38643 per share for each share of the Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock).

(e) (i) For purposes of this Section 2, a “**Liquidation Event**” shall mean (A) the closing of the sale, lease, transfer or other disposition of all or substantially all of this corporation’s assets, (B) the consummation of the merger or consolidation of this corporation with or into another entity (except a merger or consolidation in which the holders of capital stock of this corporation immediately prior to such merger or consolidation continue to hold at least 50% of the voting power of the capital stock of this corporation or the surviving or acquiring entity immediately following such merger or consolidation), (C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of this corporation’s securities), of this corporation’s securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of this corporation (or the surviving or acquiring entity) or (D) a liquidation, dissolution or winding up of this corporation; *provided, however*, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this corporation’s incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held this

corporation's securities immediately prior to such transaction. Notwithstanding the prior sentence, the primary sale of shares of this corporation's capital stock in a financing transaction or in a series of transactions shall not be deemed a Liquidation Event. The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the Requisite Series C Holders.

(ii) In any Liquidation Event, if Proceeds received by this corporation or its stockholders is other than cash or securities, its value will be deemed its fair market value as determined by this corporation's Board of Directors. Any securities shall be valued as follows:

(A) For securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange or a similar national quotation system, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the twenty (20) trading-day period ending three (3) trading days prior to the closing of the Liquidation Event;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) of the securities over the twenty (20) trading-day period ending three (3) trading days prior to the closing of the Liquidation Event; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors of this corporation and the Requisite Series C Holders.

(B) The method of valuation of securities subject to investment letter or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors of this corporation and the Requisite Series C Holders.

(C) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event shall, upon approval by the stockholders of the definitive agreements governing a Liquidation Event, be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event.

(iii) In the event the requirements of this Section 2 are not complied with, this corporation shall forthwith either:

(A) cause the closing of such Liquidation Event to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(e)(iv) hereof.

(iv) This corporation shall give each holder of record of Preferred Stock written notice of such impending Liquidation Event not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes thereto. The transaction shall in no event take place sooner than twenty (20) days after this corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; *provided, however*, that subject to compliance with the General Corporation Law such periods may be shortened or waived upon the written consent of the Requisite Series C Holders.

3. Redemption.

(a) **Optional Redemption of Series C Preferred Stock.** At any time on or after June 30, 2016, and within ninety (90) days after the receipt by this corporation of a written request from the Requisite Series C Holders that all of the then-outstanding shares of Series C Preferred Stock be redeemed, this corporation shall, to the extent it may lawfully do so, redeem in one (1) lump sum installment (such date, the "***Series C Redemption Date***") the then-outstanding shares of Series C Preferred Stock, by paying in cash therefor a sum per share equal to (i) Original Issue Price for such shares of Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), plus (ii) all declared but unpaid dividends (if any) on such shares (the "***Series C Redemption Price***"). Any redemption of a series of Series C Preferred Stock effected pursuant to this subsection 3(a) shall be made on a pro rata basis among the holders of Series C Preferred Stock in proportion to the aggregate Series C Redemption Price of each such holder of Series C Preferred Stock would otherwise be entitled to receive on the Series C Redemption Date

(b) **Optional Redemption of Series B Preferred Stock.** Following the Series C Redemption Date (assuming payments in full of all amounts required by subsection 3(a) above), and within ninety (90) days after the receipt by this corporation of a written request from the Requisite Series B Holders that all of the then-outstanding shares of Series B Preferred Stock be redeemed, this corporation shall, to the extent it may lawfully do so, redeem in one (1) lump sum installment (such date, the "***Series B Redemption Date***") the then-outstanding shares of Series B Preferred Stock, by paying in cash therefor a sum per share equal to (i) Original Issue Price for such shares of Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), plus (ii) all declared but unpaid dividends (if any) on such shares (the "***Series B Redemption Price***"). Any redemption of a series of Series B Preferred Stock effected pursuant to this subsection 3(b) shall be made on a pro rata basis among the holders of Series B Preferred Stock in proportion to the aggregate Series

B Redemption Price of each such holder of Series B Preferred Stock would otherwise be entitled to receive on the Series B Redemption Date.

(c) **Optional Redemption of Series A/A-1 Preferred Stock.** Following the Series B Redemption Date (assuming payments in full of all amounts required by subsections 3(a) and 3(b) above), and within ninety (90) days after the receipt by this corporation of a written request from the holders of at least two-thirds (2/3's) of the then-outstanding shares of Series A/A-1 Preferred Stock (voting together as a separate class on an as-converted to Common Stock basis) that all of the then-outstanding shares of Series A/A-1 Preferred Stock be redeemed, this corporation shall, to the extent it may lawfully do so, redeem in three (3) annual installments (each payment date being referred to herein as a "**Series A/A-1 Redemption Date**") the then-outstanding shares of Series A/A-1 Preferred Stock, on a pari passu basis, by paying in cash therefor a sum per share equal to (i) the applicable Original Issue Price for such shares of Series A/A-1 Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), plus (ii) all declared but unpaid dividends (if any) on such shares (the "**Series A/A-1 Redemption Price**"). The number of shares of Series A/A-1 Preferred Stock that this corporation shall be required to redeem on any one Series A/A-1 Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series A/A-1 Preferred Stock outstanding immediately prior to such Series A/A-1 Redemption Date by (ii) the number of remaining Series A/A-1 Redemption Dates (including the Series A/A-1 Redemption Date to which such calculation applies). Any redemption of a series of Series A/A-1 Preferred Stock effected pursuant to this subsection 3(c) shall be made on a pro rata basis among the holders of Series A/A-1 Preferred Stock in proportion to the aggregate Series A/A-1 Redemption Price of each such holder of Series A/A-1 Preferred Stock would otherwise be entitled to receive on the applicable Series A/A-1 Redemption Date.

(d) **Redemption Notice.** At least fifteen (15) but no more than thirty (30) days prior to each Series A/A-1 Redemption Date and at least fifteen (15) but no more than thirty (30) days prior to each of the Series C Redemption Date and the Series B Redemption Date (each such redemption date, a "**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 Preferred Stock, at the address last shown on the records of this corporation for such holder, notifying such holder of the redemption to be effected on the applicable Redemption Date, specifying the number of shares of Preferred Stock to be redeemed from such holder, the applicable Series C Redemption Price, Series B Redemption Price or Series A/A-1 Redemption Price and the place at which payment may be obtained and calling upon such holder to surrender to this corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed, if any (the "**Redemption Notice**"). Except as provided in subsection (3)(e), on or after each Redemption Date, each holder of Preferred Stock on such Redemption Date shall surrender to this corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the applicable Series C Redemption Price, Series B Redemption Price or Series A/A-1 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.

(e) **Termination of Rights; Insufficient Funds.** From and after each Redemption Date, unless there shall have been a default in payment of the applicable Series C Redemption Price, Series B Redemption Price or Series A/A-1 Redemption Price, all rights of the holders of shares of Preferred Stock designated for redemption on such Redemption Date in the Redemption Notice as holders of Preferred Stock (except the right to receive the applicable Series C Redemption Price, Series B Redemption Price or Series A/A-1 Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of this corporation legally available for redemption of shares of Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Preferred Stock to be redeemed on such date, those funds that 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 in proportion to the aggregate Series C Redemption Price, Series B Redemption Price or Series A/A-1 Redemption Price that each such holder would be entitled to receive pursuant to subsection 3(a), 3(b) or 3(c), as the case may be. The shares of 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 this corporation are legally available for the redemption of shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares that this corporation has become obliged to redeem on any Redemption Date but that it has not redeemed.

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

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for such series by the Conversion Price (as defined below) for such series (the conversion rate for a series of Preferred Stock into Common Stock is referred to herein as the “**Conversion Rate**” for such series), determined as hereafter provided, in effect on the time of conversion. The “**Conversion Price**” shall initially be \$0.87989 per share for the Series C Preferred Stock, \$0.86319 per share for the Series B Preferred Stock, \$0.65818 per share for the Series A-1 Preferred Stock and \$0.38643 per share for the Series A Preferred Stock; *provided, however*, that the Conversion Price for the Series C Preferred Stock, Series B Preferred Stock, Series A-1 Preferred Stock and Series A Preferred Stock, as the case may be, shall be subject to adjustment as set forth in subsection 4(d).

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the applicable Conversion Rate at the time in effect for each series of Preferred Stock immediately upon the earlier of (i) this corporation’s sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 under the Securities Act of 1933, as amended, the public offering price of which was not less than three times the Original Issue Price per share of the applicable series of Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) and which results in at least

\$25,000,000 of net proceeds to this corporation (a “**Qualified Public Offering**”) or (ii) the date specified by written consent or agreement of the Requisite Series C Holders.

(c) **Mechanics of Conversion.**

(i) Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock pursuant to subsection 4(a), he or she shall surrender the certificate or certificates therefor (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to this corporation to indemnify this corporation against any claim that may be made against this corporation on account of the alleged loss, theft or destruction of such certificate), duly endorsed, at the office of this corporation or of any transfer agent for the Preferred Stock, and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, together with any cash in lieu of a fraction of a share. 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 as of such date.

(ii) If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(iii) If the conversion is in connection with the automatic conversion provisions of subsection 4(b) above, such conversion shall be deemed to have been made on the date of closing of the transaction pursuant to subsection 4(b)(i) or the conversion date described in the stockholder consent approving such conversion pursuant to subsection 4(b)(ii) (the “**Automatic Conversion Time**”), and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date. All holders of record of shares of Preferred Stock shall be sent written notice of the Automatic Conversion Time and the place designated for automatic conversion of all such shares of Preferred Stock pursuant to subsection 4(b). Such notice need not be sent in advance of the occurrence of the Automatic Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to this corporation to indemnify this corporation against any claim that may be made against this corporation on account of the alleged loss, theft or destruction of such certificate) to

this corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to subsection 4(b). At the Automatic Conversion Time, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. If so required by this corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to this corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Automatic Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for the Preferred Stock, this corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof.

(iv) All shares of Preferred Stock shall, from and after the Automatic Conversion Time, no longer be deemed to be outstanding and, notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares on or prior to such time, all rights with respect to such shares shall immediately cease and terminate at the Automatic Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.

(i) The applicable Conversion Price of the Series C Preferred Stock, Series B Preferred Stock, Series A-1 Preferred Stock and Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(A) If this corporation shall issue, on or after the date upon which this Fifth Amended and Restated Certificate of Incorporation is accepted for filing by the Secretary of State of the State of Delaware (the "**Filing Date**"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the applicable Conversion Price of the Series C Preferred Stock, the Series B Preferred Stock, the Series A Preferred Stock or the Series A-1 Preferred Stock, as the case may be, in effect immediately prior to the issuance of such Additional Stock, then such applicable Conversion Price shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying the Conversion Price applicable to such series of Preferred Stock by a fraction:

(1) the numerator of which shall be (X) the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus (Y) the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and

(2) the denominator of which shall be (X) the number of shares of Common Stock Outstanding immediately prior to such issuance plus (Y) the number of shares of such Additional Stock.

For purposes of this Section 4(d)(i)(A), the term “**Common Stock Outstanding**” shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of outstanding Preferred Stock, (3) Common Stock issuable upon exercise of outstanding stock options and (4) Common Stock issuable upon exercise (and, in the case of warrants to purchase Preferred Stock, conversion) of outstanding warrants. Shares described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(B) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or, if none, shall be made at the end of such three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections 4(d)(i)(E)(3) and 4(d)(i)(E)(4) below, no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefor:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights

(without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock, as applicable, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock, as applicable, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or 4(d)(i)(E)(1)(4).

(6) If the number of shares of Common Stock issuable upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, or the consideration payable to this corporation upon

such exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, cannot be calculated at all at the time such at the time such options or rights were issued, any adjustment to the Conversion Price of the Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock, as applicable, that would result under the terms of this subsection 4(d)(i)(E) at the time of such issuance shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price of the Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock, as applicable, that such issuance took place at the time such calculation can first be made.

(ii) “*Additional Stock*” shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this corporation on or after the Filing Date other than shares of Common Stock issued (or deemed issued pursuant to subsection 4(d)(i)(E)):

(A) as a dividend or distribution on all outstanding shares of Preferred Stock;

(B) pursuant to a transaction described in subsection 4(d)(iii) hereof;

(C) to employees, directors, consultants and other service providers, or stock options to purchase such shares of Common Stock issued to employees, directors, consultants and other service providers, for the primary purpose of soliciting or retaining their services pursuant to a plan, agreement or agreement approved by this corporation’s Board of Directors;

(D) upon exercise of stock options or warrants to purchase shares of Common Stock outstanding as of the Filing Date, in each case provided such issuance is pursuant to the terms of such stock option or warrant;

(E) pursuant to a Qualified Public Offering;

(F) upon conversion of the Preferred Stock;

(G) upon conversion or exchange of securities convertible into or exchangeable for shares of Common Stock and outstanding as of the Filing Date, in each case provided such issuance is pursuant to the terms of such securities;

(H) pursuant to subsection 4(d)(i)(E) as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of Section 4(d);

(I) pursuant to the Series C Preferred Purchase Agreement, dated on or about the date hereof, between this corporation and the other parties thereto; or

(J) pursuant to equipment leasing or other debt financing transactions, or warrants to purchase such shares of Common Stock pursuant to equipment leasing or other debt financing transactions, approved unanimously by this corporation's Board of Directors.

(iii) In the event this corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "**Common Stock Equivalents**") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series of Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(v) In the event this corporation shall issue on more than one date Additional Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price of any series of Preferred Stock pursuant to the terms of subsection 4(d), then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(e) **Other Distributions.** In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series C Preferred Stock, the Series B Preferred Stock and the Series A/A-1 Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock, as applicable, are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations and Mergers. Subject to the provisions of Section 2, if at any time or from time to time there shall be a reorganization, recapitalization, reclassification, consolidation or merger of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Series C Preferred Stock, the Series B Preferred Stock and the Series A/A-1 Preferred Stock shall thereafter be entitled to receive upon conversion of the Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock the number of shares of stock or other securities or property of this corporation or otherwise, to which a holder of Common Stock deliverable upon conversion of such series of Preferred Stock would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series C Preferred Stock, the Series B Preferred Stock and the Series A/A-1 Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price of each series of Preferred Stock then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series C Preferred Stock, Series B Preferred Stock or Series A/A-1 Preferred Stock and the aggregate number of shares of Common Stock to be issued to particular stockholders, shall be rounded down to the nearest whole share and this corporation shall pay in cash the fair market value of any fractional shares as of the time when entitlement to receive such fractions is determined. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series C Preferred Stock, Series B Preferred Stock or Series A/A-1 Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series C Preferred Stock, Series B Preferred Stock and Series A/A-1 Preferred Stock, as applicable, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This 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 (A) such adjustment and readjustment, (B) the Conversion Price for the Series C Preferred Stock, Series B Preferred Stock or Series A/A-1 Preferred Stock, as applicable, at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series C Preferred Stock, Series B Preferred Stock or Series A/A-1 Preferred Stock.

(h) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the

holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, this corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution, and the amount and character of such dividend or distribution.

(i) Reservation of Stock Issuable Upon Conversion. This 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 Series C Preferred Stock, Series B Preferred Stock or Series A/A-1 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 Series C Preferred Stock, Series B Preferred Stock or Series A/A-1 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, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Fifth Amended and Restated Certificate of Incorporation.

(j) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

(k) Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, (i) any downward adjustment of the Conversion Price of the Series C Preferred Stock may be waived, either prospectively or retroactively in a particular instance, by the consent or vote of the Requisite Series C Holders; any such waiver shall bind all holders of shares of the Series C Preferred Stock, (ii) any downward adjustment of the Conversion Price of the Series B Preferred Stock may be waived, either prospectively or retroactively in a particular instance, by the consent or vote of the Requisite Series B Holders; any such waiver shall bind all holders of shares of the Series B Preferred Stock, (iii) any downward adjustment of the Conversion Price of the Series A-1 Preferred Stock may be waived, either prospectively or retroactively in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of the Series A-1 Preferred Stock, voting separately as a class; any such waiver shall bind all holders of shares of the Series A-1 Preferred Stock, and (iv) any downward adjustment of the Conversion Price of the Series A Preferred Stock may be waived, either prospectively or retroactively in a particular instance, by the consent or vote of the holders of a majority of the outstanding shares of the Series A Preferred Stock, voting separately as a class; any such waiver shall bind all holders of shares of the Series A Preferred Stock.

(l) Taxes. This corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to subsection 4(c). This corporation shall not, however, be required to pay any tax which may be payable in respect of

any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to this corporation the amount of any such tax or has established, to the satisfaction of this corporation, that such tax has been paid.

(m) **Termination of Conversion Rights.** In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 3, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the applicable Redemption Date, unless the redemption price is not fully paid on such Redemption Date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

5. Voting Rights.

(a) **General Voting Rights.** On any matter presented to the stockholders of this corporation for their action or consideration at any meeting of stockholders of this corporation (or by written consent of stockholders in lieu of meeting), the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could be converted as of the record date for determining stockholders entitled to vote on such matter, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of this corporation. Except as provided by law or by the other provisions of this Fifth Amended and Restated Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) **Voting for the Election of Directors.** As long as any shares of Series C Preferred Stock are outstanding, the holders of such shares of Series C Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of this corporation at any election of directors (the "**Series C Director**"). As long as any shares of Series B Preferred Stock are outstanding, the holders of such shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of this corporation at any election of directors (the "**Series B Director**"). As long as any shares of Series A-1 Preferred Stock are outstanding, the holders of such shares of Series A-1 Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of this corporation at any election of directors (each a "**Series A-1 Director**"). As long as any shares of Series A Preferred Stock are outstanding, the holders of such shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of this corporation at any election of directors (the "**Series A Director**"). The holders of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of this corporation at any election of directors. The holders of Preferred Stock and Common Stock (voting together as a single class and not as separate series,

and on an as-converted basis) shall be entitled to elect any remaining directors of this corporation.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Fifth Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; *provided, however*, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board of Directors' action to fill such vacancy by voting for their own designee to fill such vacancy (i) at a meeting of this corporation's stockholders or (ii) by written consent. Any director may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

6. Preferred Stock Protective Provisions.

(a) Series C Preferred Stock and Series B Preferred Stock Majority Protective Provisions. So long as any shares of the Series C Preferred Stock or Series B Preferred Stock are outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without (in addition to any other vote required by law or the Fifth Amended and Restated Certificate of Incorporation) first obtaining the approval (by vote or written consent, as provided by law) of (x) the holders of at least a majority of the shares of the Series C Preferred Stock (voting separately as a class) and (y) the holders of a majority of the shares of the Series B Preferred Stock (voting separately as a class):

- (i)** consummate a Liquidation Event;
- (ii)** increase or decrease (other than by redemption or conversion) the total number of authorized shares of any series of Preferred Stock;
- (iii)** take any action or enter into any agreement (whether by means of amendment to this Fifth Amended and Restated Certificate of Incorporation or by merger, consolidation or otherwise) to issue, create or authorize any new class or series of securities which has a preference over, or is offered with rights on a *pari passu* basis with, the Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock or Series A-1 Preferred Stock with respect to liquidation, dividends, or redemption;
- (iv)** amend, alter or repeal any provision of this corporation's Certificate of Incorporation or Bylaws;

(v) increase the authorized number of directors of this corporation in connection with any bona fide, arms length transaction that has been approved by the Board of Directors involving the sale or issuance of debt or equity securities of this corporation to one or more institutional or strategic investors for the purpose of financing this corporation and its operations whereby such institutional or strategic investors have, as a condition of such transaction, required an increase in the authorized number of directors; or

(vi) cause or permit any of the corporation's subsidiaries or affiliates to do any of the action specified in subsections (i) through (v) above.

(b) Series C Preferred Stock Supermajority Protective Provisions.
So long as any shares of the Series C Preferred Stock are outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without (in addition to any other vote required by law or the Fifth Amended and Restated Certificate of Incorporation) first obtaining the approval (by vote or written consent, as provided by law) of the Requisite Series C Holders:

(i) alter or change the powers, preferences or special rights of the shares of the Series C Preferred Stock so as to affect them adversely and in a manner different from the other series of Preferred Stock (it being understood that, without limiting the foregoing, different series of Preferred Stock shall not be affected differently because of proportional differences in the amounts of their respective issue prices, liquidation preferences, dividend preferences and redemption prices that arise out of differences in the Original Issue Price for each such series)(it being further understood that, without limiting the foregoing, any change to the relative order of preferences in this Fifth Amended and Restated Certificate of Incorporation shall be considered to adversely affect the affected series of Preferred Stock);

(ii) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of any series of Preferred Stock or Common Stock; *provided, however*, that this restriction shall not apply to (i) the redemption or repurchase of the Series C Preferred Stock as expressly authorized herein or (ii) the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;

(iii) incur any indebtedness for borrowed money of this corporation or any subsidiary exceeding, in the aggregate, \$100,000;

(iv) grant or cause to be granted a security interest in this corporation's assets, except with the approval of this corporation's Board of Directors (including the Series C Director);

(v) change the authorized number of directors of this corporation, except as permitted in subsection 6(a)(v) above, in which case such change will not require the approval of the Requisite Series C Holders; or

(vi) cause or permit any of the corporation's subsidiaries or affiliates to do any of the action specified in subsections (i) through (v) above.

(c) Series B Preferred Stock Supermajority Protective Provisions.

So long as any shares of the Series B Preferred Stock are outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without (in addition to any other vote required by law or the Fifth Amended and Restated Certificate of Incorporation) first obtaining the approval (by vote or written consent, as provided by law) of the Requisite Series B Holders:

(i) alter or change the powers, preferences or special rights of the shares of the Series B Preferred Stock so as to affect them adversely and in a manner different from the other series of Preferred Stock (it being understood that, without limiting the foregoing, different series of Preferred Stock shall not be affected differently because of proportional differences in the amounts of their respective issue prices, liquidation preferences, dividend preferences and redemption prices that arise out of differences in the Original Issue Price for each such series)(it being further understood that, without limiting the foregoing, any change to the relative order of preferences in this Fifth Amended and Restated Certificate of Incorporation shall be considered to adversely affect the affected series of Preferred Stock);

(ii) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of any series of Preferred Stock or Common Stock; *provided, however*, that this restriction shall not apply to (i) the redemption or repurchase of the Series C Preferred Stock or the Series B Preferred Stock as expressly authorized herein or (ii) the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;

(iii) incur any indebtedness for borrowed money of this corporation or any subsidiary exceeding, in the aggregate, \$100,000;

(iv) declare or distribute any dividend (other than a stock dividend) on any class or series of capital stock of this corporation prior to the Series B Preferred Stock, except for the declaration or distribution of any such dividend on the Series C Preferred Stock;

(v) grant or cause to be granted a security interest in this corporation's assets, except with the approval of this corporation's Board of Directors (including the Series B Director); or

(vi) change the authorized number of directors of this corporation, except as permitted in subsection 6(a)(v) above, in which case such change will not require the approval of the Requisite Series B Holders.

(d) Series A/A-1 Preferred Stock Protective Provisions. So long as any shares of the Series A/A-1 Preferred Stock are outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without (in addition to any other vote required by law or the Fifth Amended and Restated Certificate of Incorporation) first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 66.66% of the

Series A/A-1 Preferred Stock, alter or change the powers, preferences or special rights of the shares of the Series A/A-1 Preferred Stock so as to affect them adversely and in a manner different from the other series of Preferred Stock (it being understood that, without limiting the foregoing, different series of Preferred Stock shall not be affected differently because of proportional differences in the amounts of their respective issue prices, liquidation preferences, dividend preferences and redemption prices that arise out of differences in the Original Issue Price for each such series)(it being further understood that, without limiting the foregoing, any change to the relative order of preferences in this Fifth Amended and Restated Certificate of Incorporation shall be considered to adversely affect the affected series of Preferred Stock).

7. Status of Redeemed or Converted Stock. In the event any shares of Preferred Stock shall be redeemed or converted pursuant to Section 3 or Section 4 hereof, the shares so redeemed or converted shall be retired and cancelled and shall not be issuable by this corporation. The Fifth Amended and Restated Certificate of Incorporation of this corporation shall be appropriately amended (without the need for stockholder action) to effect the corresponding reduction in this corporation's authorized capital stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of this corporation legally available therefor, any dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section 2 of Article IV(B) hereof.

3. Redemption. The Common Stock is not redeemable at the option of the holder.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law; *provided, however*, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Fifth Amended and Restated Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Fifth Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Fifth Amended and Restated Certificate of Incorporation) the

affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

ARTICLE V

Except as otherwise provided in this Fifth Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

ARTICLE VI

Subject to any additional vote required by this Fifth Amended and Restated Certificate of Incorporation, the number of directors of this corporation shall be determined in the manner set forth in the Bylaws of this corporation.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

ARTICLE VIII

Meeting of stockholders may be held within or without the State of Delaware, as the Bylaws of this corporation may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside 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 of this corporation.

ARTICLE IX

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

Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of this corporation shall not adversely affect any right or protection of a director of this corporation existing at the time, or increase the liability of any director of this corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE X

The corporation shall, to the fullest extent authorized under the laws of the State of Delaware, as those laws may be amended and supplemented from time to time, indemnify and advance the expenses of any director made, or threatened to be made, a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director of the corporation or a predecessor corporation or, at the corporation's request, a director or officer of another corporation; *provided, however*, that the corporation shall indemnify and advance the expenses of any such agent in connection with a proceeding initiated by such agent only if such proceeding was authorized by the Board of Directors of the corporation.

To the fullest extent permitted by applicable law, this corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits this corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law of the State of Delaware, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any repeal or modification of any of the foregoing provisions of this Article X shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such repeal or modification.

ARTICLE XI

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

ARTICLE XII

This corporation renounces any interest or expectancy of this 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 this corporation who is not an employee or consultant of this 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 or consultant of this 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 this corporation.

* * *

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That this Fifth Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, the undersigned hereby executes this Fifth Amended and Restated Certificate of Incorporation this 30th day of June, 2011, and affirms under penalties of perjury that this document is signed as the free act and deed of the undersigned officer for and on behalf of this corporation, and that the facts stated herein are true and correct.

/s/ David F. Muller

David F. Muller

Chief Executive Officer