

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

AqueSys, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is AqueSys, Inc.
2. The Corporation was originally incorporated and the original Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on April 6, 2005 under the name TIF Acquisition VI, Inc.
3. The Corporation filed with the Secretary of the State of Delaware on February 13, 2006 a Certificate of Amendment of Certificate of Incorporation to effectuate a change in the Corporation's name to AqueSys, Inc.
4. The Corporation filed an Amended and Restated Certificate of Incorporation with the Secretary of the State of Delaware on May 17, 2006.
5. The Corporation filed a Second Amended and Restated Certificate of Incorporation with the Secretary of the State of Delaware on June 18, 2007.
6. The Corporation filed a Third Amended and Restated Certificate of Incorporation with the Secretary of the State of Delaware on June 30, 2008.
7. The Corporation filed a Fourth Amended and Restated Certificate of Incorporation with the Secretary of the State of Delaware on June 4, 2010.
8. This Fifth Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 141(f), 228, 242 and 245 of the General Corporation Law of the State of Delaware by the written consent of the Corporation's Board of Directors and its stockholders. This Fifth Amended and Restated Certificate of Incorporation restates, integrates, amends and supersedes the provisions of the Fourth Amended and Restated Certificate of Incorporation of the Corporation.
9. The text of the Fourth Amended and Restated Certificate of Incorporation is hereby restated and amended to read in its entirety as follows:

FIRST: The name of the corporation (hereinafter called the "Corporation") is: AqueSys, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is: 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The registered agent in charge thereof is The Corporation Trust Company.

THIRD: 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 (the "General Corporation Law").

FOURTH: The Corporation is authorized to issue two classes of stock to be designated respectively preferred stock and common stock. The total number of shares of all classes of stock which the Corporation shall have authority to issue is One Hundred Seven Million One Hundred Forty Eight Thousand Eight Hundred Twenty (107,148,820) shares, of which: (i) Sixty Million Five Hundred Thousand (60,500,000) shares shall be designated shares of common stock, \$0.0001 par value per share (the "Common Stock") and (ii) Forty Six Million Six Hundred Forty Eight Thousand Eight Hundred Twenty (46,648,820) shall be designated shares of preferred stock, \$0.0001 par value per share (the "Preferred Stock"), of which Eight Million Two Hundred Twenty-Four Thousand Seventy Five (8,224,075) shares shall be designated Series A Convertible Preferred Stock (the "Series A Preferred Stock"), Seven Million Nine Hundred Sixty Three Thousand Four Hundred Forty Five (7,963,445) shares shall be designated Series B Convertible Preferred Stock (the "Series B Preferred Stock") and Thirty Million Four Hundred Sixty One Thousand Three Hundred (30,461,300) shares shall be designated Series C Convertible Preferred Stock (the "Series C Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of the Common Stock and Preferred Stock.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock.
2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. There shall be no cumulative voting.
3. Number of Shares. Subject to the approval of the holders of Preferred Stock pursuant to Section B.7. of Article Fourth, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.
4. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor if, as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.
5. Liquidation. In the event of any Liquidation Event (as defined below), the holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock set forth in Section B.2. below.

B. PREFERRED STOCK.

1. Dividends. The holders of the Preferred Stock shall be entitled to receive, in preference to the holders of the Common Stock, out of funds legally available therefor, if, as and when declared by the Board of Directors, non-cumulative dividends (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 the Corporation) annually at a rate (the "Preferred Dividend Rate") equal to eight percent (8%) of the respective Original Issue Price (as defined below). Unless all declared dividends on the Preferred Stock have been paid or a sum sufficient for the payment thereof set apart, in an amount at least equal to the Preferred Dividend Rate, no dividend shall be paid or declared, and no distribution shall be made, on the Common Stock and, other than in the case of redemptions permitted by Section 7(b) below, no redemption of the Common Stock shall occur. In the event that, after giving effect to the foregoing, a dividend is permitted to be paid, and is paid, on the Common Stock, the holders of the Preferred Stock will participate in such dividend on *pari passu*, as converted basis, such that each holder of the Preferred Stock is paid an amount equal to the dividend paid per share of Common Stock multiplied by the number of shares of Common Stock into which such holder's shares of Preferred Stock may then be converted. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then declared but unpaid with respect to the Preferred Stock, such payment shall be distributed ratably among the holders of Preferred Stock based upon the aggregate number of shares of Preferred Stock held by each such holder. Upon any conversion of shares of Preferred Stock, all rights to such preferential dividends on such shares shall terminate. For purposes of this Fifth Amended and Restated Certificate of Incorporation (this "Restated Certificate"), "Original Issue Price" shall mean \$0.839 per share for each share of the Series A Preferred Stock, \$1.149 per share for each share of the Series B Preferred Stock and \$1.149 per share for each share of the Series C Preferred Stock (each as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock, each a "Recapitalization Event"). 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 with respect to payments made by this 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 bylaw provisions or agreements providing for such rights, and (iii) any other repurchase or redemption of shares of Common Stock or Preferred Stock approved by the majority of the holders of Preferred Stock of the Corporation voting together as a single class on an as-converted basis.

2. Liquidation, Dissolution or Winding Up.

(a) In the event of any Liquidation Event, 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 A Preferred Stock, Series B Preferred Stock and Common Stock by reason of their ownership

thereof, an amount per share equal to the sum of the Original Issue Price for the Series C Preferred Stock, plus declared but unpaid dividends on such share. If, upon the occurrence of any 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 aforesaid preferential amounts, 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 (a).

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

(c) Upon the completion of the distributions required by subsections (a) and (b) of this Section 2, the remaining Proceeds shall be distributed among the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock, pro rata based on the number of shares of Common Stock held by each (assuming full conversion of all such Preferred Stock) until, with respect to each series of Preferred Stock, such holders shall have received the applicable Participation Cap (as defined below); thereafter, if Proceeds remain, the holders of the Common Stock of the Corporation shall receive all of the remaining Proceeds pro rata based on the number of shares of Common Stock held by each. For purposes of this Restated Certificate, "Participation Cap" shall mean \$1.678 per share for the Series A Preferred Stock, \$2.298 per share for the Series B Preferred Stock and \$2.298 per share for the Series C Preferred Stock (each as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), which includes amounts paid pursuant to subsections (a) and (b) of this Section 2.

(d) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(e) In the event the amount distributable to the Corporation's stockholders in connection with a Liquidation Event is payable in installments (an "Installment Sale"), and to the extent that the aggregate distributions actually paid pursuant to such Installment Sale would yield Proceeds for a holder of Preferred Stock if such holder had converted its shares into Common Stock in an amount greater than the amount of Proceeds payable to such holder pursuant to Sections B.2(a) through B.2(d) above (the "Preferred Liquidation Preference"), then, such holder will be entitled to receive the preferential distributions provided under Sections B.2(a) through B.2(d) that apply and, notwithstanding Sections B.2(a) through B.2(d) above, at such time as cumulative distributions would yield more if such holder had converted its shares into Common Stock, such holder at that time will be entitled to be paid the difference between the amount that it would have received if it had converted its shares into Common Stock and its Preferred Liquidation Preference; provided that in no event shall this Section B.2(e)(i) cause a holder of Preferred Stock to receive a lesser amount of Proceeds than such holder would receive pursuant to Sections B.2(a) through B.2(d) above or (ii) alter the priority in which Proceeds are paid as set forth in Sections B.2(a) through B.2(c) above.

(f) For purposes of this Section 2, a "Liquidation Event" shall include (A) the closing of the sale, transfer or other disposition of all or substantially all of the Corporation's assets, (B) the exclusive license of all or substantially all of the Corporation's primary intellectual property, (C) the consummation of the merger or consolidation of the Corporation with or into another entity (except a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least fifty percent (50%) of the voting power of the capital stock of the Corporation or the surviving or acquiring entity), or (D) a liquidation, dissolution or winding up of the Corporation; provided, however, that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of the Corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation's securities immediately prior to such transaction. Notwithstanding the prior sentence, the sale of shares of Preferred Stock in a financing transaction 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 affirmative vote or written consent of the holders of at least (i) a majority of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting together as a single class on an as-converted basis, and (ii) sixty-six and two thirds (66 2/3%) of the outstanding shares of Series C Preferred Stock, voting separately as a class.

(i) In any Liquidation Event, if Proceeds received by the Corporation or its stockholders is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system 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) 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 Corporation and the holders of at least seventy-five percent (75%) of the outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(B) The method of valuation of securities subject to investment letter or other 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 Corporation and the holders of at least seventy-five percent (75%) of the outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(ii) In the event the requirements of this Section 2 are not complied with, the 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 the 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(d)(iv) hereof.

(iii) The 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 the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the 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 holders of Preferred Stock that represent at least seventy-five percent (75%) of the outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(g) In the event of a Liquidation Event, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies:

(i) The portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with this Section 2 as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event; and

(ii) Any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with this Section 2 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

3. Voting Rights.

(a) General. Each holder of outstanding shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are then convertible (as adjusted from time to time pursuant to Section 4 hereof) at each meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law, by the provisions of Section 7 below or by the provisions establishing any other series of preferred stock, holders of Preferred Stock and of any other outstanding series of preferred stock shall vote together with the holders of Common Stock as a single class on an as converted to Common Stock basis.

(b) Election of Directors. At each election of directors of the Corporation, (i) for so long as at least twenty percent (20%) of the originally issued shares of Series C Preferred Stock (as adjusted for any Recapitalization Events) remain outstanding, the holders of Series C Preferred Stock, voting as a separate class, shall be entitled to elect two (2) directors (each a "Series C Director"), (ii) for so long as at least twenty percent (20%) of the originally issued shares of Series A Preferred Stock and Series B Preferred Stock (as adjusted for any Recapitalization Events) remain outstanding, the holders of Series A Preferred Stock and Series B Preferred Stock, voting together as a single and separate class, shall be entitled to elect three (3) directors (the "Series A and Series B Directors," and together with the Series C Directors, the "Preferred Directors"), (iii) the holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) director (the "Common Director") and (iv) the holders of Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect the remaining directors of the Corporation.

4. Optional Conversion.

(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, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price by the applicable Conversion Price (as defined below) in effect at the time of conversion. The "Conversion Price" shall initially equal \$0.839 per share for the Series A Preferred Stock, \$1.149 per share for the

Series B Preferred Stock and \$1.149 per share for the Series C Preferred Stock, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock shall be subject to adjustment as provided below.

(b) In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 6 hereof, the conversion rights of the shares designated for redemption shall terminate at the close of business on the fifth full day preceding the date fixed for redemption, unless the redemption price is not paid when due, in which case the conversion rights for such shares shall continue until such price is paid in full. Upon a Liquidation Event, the conversion rights shall terminate at the close of business on the first full day immediately preceding the date fixed for the payment of any amounts distributable to the holders of Preferred Stock in connection with such Liquidation Event.

(c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay such holder an amount equal to such fraction multiplied by the then effective Conversion Price for such series of Preferred Stock.

(d) Mechanics of Conversion.

(i) If a holder of Preferred Stock elects to convert shares of Preferred Stock into shares of Common Stock pursuant to subsection (a) above, such holder shall surrender the certificate or certificates for such shares of Preferred Stock at the principal office of the Corporation together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and the effective date of the conversion (the "Conversion Date"), which may be any date within the sixty (60)-day period following the date on which such notice is received by the Corporation. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or such holder's attorney duly authorized in writing. The converting holder shall be deemed to be the record holder of the resulting shares of Common Stock on the Conversion Date and the Corporation shall, as soon as practicable after the Conversion Date (and in any event within fifteen (15) business days), issue and deliver at such office of such holder of Preferred Stock, or to such holder's nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with payment in lieu of any fraction of a share pursuant to Section 4(b) above.

(ii) The Corporation shall at all times when the Preferred Stock shall be outstanding reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price of any series of Preferred Stock below the then par value of the shares of Common Stock issuable upon conversion of such series of Preferred Stock, the Corporation will, to the extent permitted by applicable law, take any corporate action which may,

in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price for such series of Preferred Stock.

(iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared or accrued but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(iv) On the Conversion Date, all shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared or accrued but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from thereafter take such appropriate action as may be necessary to reduce the authorized Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes (other than taxes based on income) 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 this Section 4. The 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 the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(e) Adjustment for Dilution. If at any time on or after the date upon which this Restated Certificate is accepted by the Secretary of the State of Delaware (the "Filing Date"), the Corporation shall issue any shares of Common Stock, or shall issue any Common Stock Equivalents (as hereinafter defined), for a consideration per share less than the Conversion Price in effect for any series of Preferred Stock immediately prior to the issuance of such Common Stock or Common Stock Equivalents, the Conversion Price of such share of such series of Preferred Stock in effect immediately prior to each such issuance shall be decreased to the amount determined in accordance with the following formula:

$$\text{Conversion Price for such series} = \frac{(P1 \times Q1) + (P2 \times Q2)}{Q1 + Q2}$$

(For purposes of the foregoing formula:

P1 = Conversion Price in effect immediately prior to such issuance.

Q1 = Number of shares of Common Stock deemed outstanding (in accordance with subparagraph (vi) below) immediately prior to such issuance.

P2 = Average price per share received by the Corporation upon such issuance (determined in accordance with subparagraphs (iii) and (vi) below).

Q2 = Number of shares of Common Stock issued or sold, or deemed to have been issued or sold (in accordance with subparagraph (vi) below) upon such issuance.

Notwithstanding the foregoing, the holders of Preferred Stock may waive the adjustment for dilution set forth in this Section 4(d) by a vote of the holders of at least seventy-five percent (75%) of the outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

For purpose of any adjustment of the Conversion Price for the Preferred Stock pursuant to this Section 4(d), the following provisions shall be applicable:

(i) "Common Stock Equivalents" means any stock or security convertible into or exercisable or exchangeable for Common Stock and any right, warrant or option to acquire Common Stock or any such convertible, exercisable or exchangeable security.

(ii) The per share consideration for the sale or issuance of Common Stock shall be the price per share received by the Corporation before payment of commissions, discounts and other expenses. The value of any non-cash consideration received or receivable upon the sale or issuance of Common Stock or Common Stock Equivalents shall be determined in good faith by the Board of Directors.

(iii) In the case of the sale or issuance of Common Stock Equivalents, the per share consideration shall be determined by dividing the maximum number of shares of Common Stock issuable with respect to such Common Stock Equivalents into the aggregate consideration received by the Corporation upon the sale or issuance of such Common Stock Equivalents plus the minimum aggregate amount of any additional consideration receivable by the Corporation upon the conversion or exercise of such Common Stock Equivalents. For the purpose of this calculation, such maximum number of shares shall be assumed to be issued on the earlier of the payment date or record date for a distribution of such Common Stock Equivalents.

(iv) If any Common Stock Equivalents included in adjustments under this Section 4(d) expire or terminate without the Common Stock to which they related having been issued, the Conversion Price for the Preferred Stock, as the case may be, shall be readjusted to eliminate the effect of the assumed issuance of such Common Stock. If any Common Stock Equivalents by their terms provide for subsequent increases in the additional consideration payable for the related Common Stock or for subsequent decreases in the number of shares of Common Stock obtainable, then, upon any such increase or decrease, the Conversion Price for the Preferred Stock, as the case may be, shall be appropriately readjusted to the extent such Common Stock Equivalents have not then expired or been exercised or converted. The aggregate increase in the Conversion Price for the Preferred Stock caused by all such readjustments shall not exceed the decrease in Conversion Price for the Preferred Stock made upon the issuance of the Common Stock Equivalents to which such readjustments relates. If any

Common Stock Equivalents by their terms provide for subsequent decreases in the additional consideration payable for the related Common Stock or for subsequent increases in the number of shares of Common Stock obtainable, then, upon any such decrease or increase, the Conversion Price for the Preferred Stock, as the case may be, shall be appropriately adjusted to the extent such Common Stock Equivalents have not then expired or been exercised or converted.

(v) In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock or Common Stock Equivalents, such Common Stock or Common Stock Equivalents shall be deemed to have been issued or sold without consideration as of the earlier of the related record or payment date.

(vi) The number of shares of Common Stock outstanding at any point in time shall include all shares then issuable or to become issuable pursuant to any Common Stock Equivalent then issued or to be issued.

(vii) The following issuances of Common Stock or Common Stock Equivalents shall be excluded from the adjustment of the Conversion Price for the Preferred Stock under this Section 4(d): (1) any dividend or distribution on any Preferred Stock; (2) any stock for which adjustment of the Conversion Price for the Preferred Stock is made pursuant to Sections 4(e), 4(f), 4(g) or 4(h) below; (3) securities offered by the Corporation to the public in a Qualified Public Offering (as defined in Section 5(a) below); (4) securities issued solely in consideration for the acquisition or licensing of technology (including, without limitation, sponsored research) by the Corporation or to a collaborative partner of the Corporation in connection with a corporate partnering transaction, if approved by the Board of Directors which approval must include the affirmative vote or consent of a majority of the Preferred Directors and at least one of the Series C Directors; (5) securities issued pursuant to any right or agreement to the extent to which an adjustment was previously made to the Conversion Price for the Preferred Stock established by this Section 4 with respect to the initial sale or grant by the Corporation of such right or agreement; (6) all securities issued or issuable pursuant to warrants or stock options outstanding on the Filing Date; (7) the issuance of Common Stock upon conversion of shares of Preferred Stock; (8) up to 9,073,026 shares issued upon the exercise of any stock options which are issued pursuant to a stock option plan approved by the Board of Directors which approval must include the affirmative vote or consent of a majority of the Preferred Directors and at least one of the Series C Directors; (9) Common Stock issued in connection with a bona fide business acquisition of or by the Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, in each case approved by the Board of Directors which approval must include the affirmative vote or consent of a majority of the Preferred Directors and at least one of the Series C Directors; (10) shares of Series C Preferred Stock sold pursuant to the Amended and Restated Series C Convertible Preferred Stock Purchase Agreement, among the Corporation and the initial purchasers of Series C Preferred Stock (as may be amended from time to time, the "Series C Purchase Agreement"); and (11) Common Stock that is issued with the approval of the Board of Directors which approval must include the affirmative vote or consent of a majority of the Preferred Directors and at least one of the Series C Directors, and the Board of Directors specifically states that it shall not be additional stock.

(f) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the outstanding Common Stock, the Conversion Price for the Preferred Stock then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the Preferred Stock, the Conversion Price for the Preferred Stock then in effect immediately before that subdivision shall be proportionately increased. If the Corporation shall at any time or from time to time after the Filing Date combine the outstanding shares of Common Stock, the Conversion Price for the Preferred Stock then in effect immediately before the combination shall be proportionately increased. If the Corporation shall at any time or from time to time after the Filing Date combine the outstanding shares of Preferred Stock, the Conversion Price for the Preferred Stock then in effect immediately before the combination shall be proportionately decreased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents, then and in each such event the Conversion Price for the Preferred Stock then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price for the Preferred Stock then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for the Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for the Preferred Stock shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or

other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

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

(j) Adjustment for Merger or Reorganization. In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is covered by Section 2(f) above), each share of Preferred Stock shall thereafter be convertible (or shall be converted into a security which shall be convertible) into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such Preferred Stock would have been entitled upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 4 set forth with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price for the Preferred Stock) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(k) No Impairment. The Corporation will not, without the appropriate vote of the stockholders under the General Corporation Law, and to the extent applicable, Section 7 of Part B of this Article Fourth, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the

terms to be observed or performed hereunder by the Corporation, but 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 necessary or appropriate in order to protect the rights of the holders of the Preferred Stock pursuant to this Section 4 against impairment.

(l) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price for the Preferred Stock 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 (but not more than twice in any 12 month period) of any holder of shares representing at least 5% of the authorized number of shares of Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for the Preferred Stock then in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which then would be received upon the conversion of the Preferred Stock.

5. Mandatory Conversion.

(a) All outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price for each series of Preferred Stock, upon either of the following: (i) the closing (the "Mandatory Conversion Date") of the sale by the Corporation of shares of Common Stock in a firm commitment, underwritten public offering pursuant to an effective registration statement under the Securities Act through a firm acceptable to the Board of Directors at a price per share of Common Stock equal to at least \$5.00 (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) and resulting in at least \$30,000,000 of gross proceeds to the Corporation (before deducting underwriting discounts and commissions and offering expenses) (a "Qualified Public Offering"), or (ii) the date specified by the holders of at least a majority of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting together as a single class on an as-converted basis, and sixty-six and two thirds (66 2/3%) of the outstanding shares of Series C Preferred Stock, voting separately as a class.

(b) All holders of record of shares of Preferred Stock will be given ten (10) business days prior written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice shall be sent both by facsimile transmission (if a facsimile number has been provided and is operational) and by first class or registered mail, postage prepaid, to each record holder of Preferred Stock at such holder's facsimile number and address last shown on the records of the Corporation for the Preferred Stock. 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 to the 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 this Section 5. On the Mandatory Conversion Date, all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote, will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive

certificates for the number of shares of Common Stock into which such Preferred Stock has been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by such holder's attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized Preferred Stock accordingly.

6. Redemption Event.

(a) At anytime after the fifth anniversary of the first issuance of shares of Series C Preferred Stock, if the Corporation shall receive a written request (an "Initial Redemption Request") by the holders of at least seventy-five percent (75%) of the shares of Preferred Stock (such requesting holders of Preferred Stock, the "Initial Requesting Holders"), the Corporation will redeem from each Requesting Holder (as defined in Section 6(c) below), at the price per share equal to the applicable Original Issue Price, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares, plus any dividends declared or accrued but unpaid thereon (the "Redemption Price"), all shares of Preferred Stock held by such Requesting Holder, in accordance with the following schedule and priority:

(i) The redemption of all shares of Preferred Stock held by the Requesting Holders shall be completed in three equal, annual payments. The first of such payments shall be made thirty (30) days following the receipt by the Corporation of the Initial Redemption Request (the "Initial Redemption Date"); the second of such payments shall be made on the one year anniversary of the Initial Redemption Date; and the third of such payments shall be made on the two year anniversary of the Initial Redemption Date (each such date a "Redemption Date").

(ii) The Requesting Holders holding Series C Preferred Stock shall receive their redemption payment on such shares of Series C Preferred Stock in full prior and in preference to any redemption payment to Requesting Holders on shares of Series A Preferred Stock or Series B Preferred Stock. After the redemption payment in full on each Requesting Holder's shares of Series C Preferred Stock, the Requesting Holders holding Series A Preferred

Stock and Series B Preferred Stock shall receive, *pari passu*, their redemption payment on such shares of Series A Preferred Stock and Series B Preferred Stock.

(b) If the funds of the Corporation legally available for redemption of Preferred Stock on any Redemption Date are insufficient to redeem all of the number of shares of Preferred Stock required under this Section 6 to be redeemed on such date, those funds which are legally available will be used first to redeem the shares of Series C Preferred Stock ratably among the Requesting Holders, and second to redeem the shares of Series A Preferred Stock and Series B Preferred Stock ratably among the Requesting Holders. At any time thereafter when additional funds of the Corporation become legally available for the redemption of Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares which the Corporation was theretofore obligated to redeem, ratably on the basis and subject to the priority set forth in the preceding sentence and Section 6(a)(ii).

(c) The Corporation shall provide notice of its receipt of an Initial Redemption Request, specifying the time, manner and place of redemption and the Redemption Price (a "Redemption Notice"), by first class or registered mail, postage prepaid, to each holder of record of the same series of Preferred Stock as the Initial Requesting Holders, at the address for such holders last shown on the records of the transfer agent therefor (or the records of the Corporation, if it serves as its own transfer agent), not less than twenty (20) days prior to the Initial Redemption Date. Each holder of record of the same series of Preferred Stock as the Initial Requesting Holders may elect to become, together with each of the Initial Requesting Holders, one of the "Requesting Holders" on the Initial Redemption Date by so indicating in a written notice mailed to the Corporation, by first class or registered mail, postage prepaid, at least ten (10) days prior to the Initial Redemption Date. Except as provided in Section 6(b) above, each Requesting Holder shall surrender to the Corporation on the applicable Redemption Date the certificate(s) representing the shares to be redeemed on such date, in the manner and at the place designated in the Redemption Notice. Thereupon, the Redemption Price shall be paid to the order of each such Requesting Holder and each certificate surrendered for redemption shall be canceled. In the case less than all Preferred Stock represented by any certificate is redeemed on any Redemption Date, a new certificate will be issued representing the unredeemed Preferred Stock without cost to the holder thereof.

(d) Unless there shall have been a default in payment of the applicable Redemption Price, no share of Preferred Stock designated for redemption on a specific Redemption Date shall be entitled to any dividends declared after such Redemption Date, and on such Redemption Date all rights of the holder of such share as a stockholder of the Corporation by reason of the ownership of such share will cease, except the right to receive the applicable Redemption Price of such share, without interest, upon presentation and surrender of the certificate representing such share, and such share will not from and after such Redemption Date be deemed to be outstanding.

(e) Upon receipt by the Corporation of the Initial Redemption Request, the Corporation shall not declare or pay any dividend until the redemption of all shares of the Preferred Stock held by the Requesting Holders has been completed in full.

7. Substantial Transactions Requiring Consent of Preferred Stock. In addition to Section 3 and any vote or consent required herein or which the Preferred Stock may have under General Corporation Law, so long as any shares of Preferred Stock shall be outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise), except as provided below, without first obtaining the affirmative vote or written consent of the holders of not less than seventy-five percent (75%) of the outstanding shares of Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis):

(a) Redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purposes) any shares of Preferred Stock other than in accordance with Section 6 hereof;

(b) Redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purposes) the capital stock of the Corporation (other than in accordance with Section 6 hereof), provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost, such as the termination of employment or pursuant to a right of first refusal, provided further, however, that the total amount applied to the repurchase of shares of Common Stock shall not exceed \$100,000 during any twelve (12) month period;

(c) Amend, alter, adopt, waive or repeal any provision of the Restated Certificate or Bylaws of the Corporation or other organizational documents of the Corporation in a manner that is adverse to the rights, preferences or privileges of the holders of Preferred Stock as a class;

(d) Authorize, create, or issue securities superior to, or on a parity with the Preferred Stock (or any series thereof) or any security that is or by its terms may become exercisable and/or convertible into such a class or series of stock;

(e) Authorize or effect any reclassification or other change of any stock, or any recapitalization of the Corporation;

(f) Authorize any merger or consolidation of the Corporation with or into any other corporation or entity;

(g) Enter into, agree to enter into or otherwise consummate any Liquidation Event, including the sale, transfer or exclusive licensing (without material field or territorial restriction) of all or substantially all of the Corporation's assets and intellectual property rights;

(h) Authorize or effect the sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets or equity of the Corporation;

(i) Enter into, agree to enter into or otherwise consummate any material joint ventures, material strategic alliances, or major partnerships, other than as approved by the Board of Directors;

(j) Pay dividends on or make other distributions with respect to any securities other than Preferred Stock;

(k) Increase or decrease the maximum or minimum number of directors that may constitute the Board of Directors;

(l) Amend, alter or repeal the preferences, special rights or other powers of the Preferred Stock so as to affect adversely the Preferred Stock;

(m) Increase the number of authorized shares of Preferred Stock;

(n) Incur any debt for borrowed money, except for bank loans, loans from institutional or other third party lenders, equipment leases and similar agreements in the ordinary and usual course of business not exceeding \$500,000 in the aggregate;

(o) Make any loans to or investments in, or guaranteeing the indebtedness of any partially owned subsidiaries, joint ventures, or partnerships;

(p) Enter into any off-balance sheet financing arrangements or use any of the Corporation's assets as collateral, whether to secure debt obligations, obligations to senior securities or otherwise, except for trade payables, inventory or equipment leases arising in the ordinary course of business; or

(q) Enter into any transaction with any (A) officer or director of the Corporation, or (B) employee or other affiliate of the Corporation, other than, in the case of (B), in the ordinary course of business on terms no more favorable than would be had in an arms length transaction.

8. Substantial Transactions Requiring Consent of Each Series of Preferred Stock. For so long as any shares of a series of Preferred Stock remain outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise), without first obtaining the affirmative vote or written consent of the holders of not less than sixty-five percent (65%) of the outstanding shares of such series;

(a) Issue any shares of such series of Preferred Stock or securities convertible into such series of Preferred Stock (other than an issuance pursuant to the Series C Purchase Agreement);

(b) Increase or decrease the authorized number of shares of such series of Preferred Stock; or

(c) Amend, alter or waive the rights, preferences or privileges of such series of Preferred Stock, it being understood that the preceding restriction shall not apply to, nor restrict, the authorization or issuance of a new series of Preferred Stock with rights, preferences or privileges senior to, or on parity with, such series of Preferred Stock.

FIFTH: The Board of Directors shall have the power to adopt, amend or repeal the Bylaws.

SIXTH: Any action which may be taken at an annual or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of not less than a majority of the outstanding stock of the Corporation entitled to be voted at a meeting at which all shares entitled to vote thereon are present and voted and shall be delivered to the Corporation by delivery to its registered office, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. This Article Sixth may only be altered, amended, or repealed by the affirmative vote of the holders of a majority or more of the outstanding shares of capital stock entitled to vote generally with respect to a resolution to amend the certificate of incorporation.

SEVENTH: The Corporation shall to the fullest extent permitted by Section 145 of the General Corporation Law, as the same may be amended and supplemented, or by any successor thereto, indemnify any and all persons whom it shall have power to indemnify under said Section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said Section. The Corporation shall advance expenses to the fullest extent permitted by said Section. Such right to indemnification and advancement of expenses shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any Bylaw, agreement, vote or stockholders or disinterested directors or otherwise.

EIGHTH: To the fullest extent that the General Corporation Law, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no person serving as a director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. Neither the amendment nor repeal of this Article Eighth nor the adoption of any provision of this Restated Certification inconsistent with this Article shall adversely affect any right or protection existing under this Article at the time of such amendment or repeal.

NINTH: To the maximum extent permitted from time to time under the laws of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, other than opportunities presented to those officers, directors or stockholders who are employees of the Corporation; provided, however, that such officer, director or stockholder acts in good faith. Nothing herein express or implied shall be deemed to relieve or excuse any director of their duty of loyalty to the Corporation or of any other fiduciary obligations owed to the Corporation by such director. No amendment or repeal of this Article Ninth shall apply to or have any effect on the liability or alleged liability of

any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director, or stockholder becomes aware prior to such amendment or repeal.

IN WITNESS WHEREOF, the Corporation has caused this Fifth Amended and Restated Certificate of Incorporation to be duly executed by its duly authorized officer as of the 17th day of February, 2011.

AQUESYS, INC.

By: /s/ Ron Bache
Ron Bache
President and CEO