

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
APRIORI TECHNOLOGIES, INC.**

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

aPriori Technologies, 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 aPriori Technologies, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on September 26, 2003 under the name FBC Systems, Inc.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate this corporation's Restated Certificate of Incorporation, as amended by Certificate of Amendment, dated October 25, 2004, and by Certificate of Amendment, dated December 10, 2004 (the "Amendments"), 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 therefore, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that this corporation's Restated Certificate of Incorporation, as amended by the Amendments, be amended and restated in its entirety as follows:

ARTICLE I

The name of this corporation is aPriori Technologies, 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, 19801, County of New Castle. The name of its registered agent at such address is Corporation Trust Company.

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.

*State of Delaware
Secretary of State
Division of Corporations
Delivered 10:39 AM 11/21/2006
FILED 10:32 AM 11/21/2006
SRV 061067870 - 3708521 FILE*

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 Twenty-Nine Million One Hundred Ninety-Five Thousand Seven Hundred Twenty-Seven (129,195,727). The total number of shares of common stock authorized to be issued is Seventy-Four Million (74,000,000), par value \$0.0001 per share (the "Common Stock"). The total number of shares of preferred stock authorized to be issued is Fifty-Five Million One Hundred Ninety-Five Thousand Seven Hundred Twenty-Seven (55,195,727), par value \$0.0001 per share (the "Preferred Stock"), of which Seventeen Million One Hundred Thirteen Thousand Four Hundred Forty-Nine (17,113,449) shares are designated as "Series A Preferred Stock" and Thirty-Eight Million Eighty-Two Thousand Two Hundred Seventy-Eight (38,082,278) shares are designated as "Series B 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 A Preferred Stock Dividends. The holders of shares of Series A Preferred Stock shall be entitled to receive dividends ("Series A Accruing Dividends"), out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than solely in Common Stock) on the Common Stock of this corporation, at the Series A Dividend Rate (as defined below), compounded annually. Such dividends shall be cumulative and shall accrue on each share of Series A Preferred Stock from day to day, whether or not earned or declared. For purposes of this subsection 1(a), "Series A Dividend Rate" shall mean \$0.01603 per annum for each share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like).

(b) Series B Preferred Stock Dividends. The holders of shares of Series B Preferred Stock shall be entitled to receive dividends ("Series B Accruing Dividends" and, together with the Series A Accruing Dividends, the "Accruing Dividends"), out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than solely in Common Stock) on the Common Stock of this corporation, at the Series B Dividend Rate (as defined below), compounded annually. Such dividends shall be cumulative and shall accrue on each share of Series B Preferred Stock from day to day, whether or not earned or declared. For purposes of this subsection 1(a), "Series B Dividend Rate" shall mean \$0.0192 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) After payment of such dividends to the holders of the Series A Preferred Stock and the Series B Preferred Stock, any additional dividends or distributions shall be distributed among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred

Stock were converted to Common Stock pursuant to the provisions of subsection 4(a) hereof (without giving effect to the issuance of Common Stock in such conversion pursuant to clause (ii) of the first sentence of subsection 4(a)).

2. Liquidation Preference.

(a) In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of 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 Common Stock by reason of their ownership thereof, an amount per share equal to the sum of (i) the applicable Original Issue Price (as defined below) for each series of Preferred Stock, (ii) all unpaid Accruing Dividends for each series of Preferred Stock, whether or not declared, plus (iii) declared but unpaid dividends on such shares pursuant to subsection 1(c); provided, however, that if, upon the occurrence of a Liquidation Event, either voluntary or involuntary, the Proceeds to be distributed among the holders of the 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 Preferred Stock in accordance with the shares of Preferred Stock held by such holders. For purposes of this Amended and Restated Certificate of Incorporation, "Series A Original Issue Price" shall mean \$0.26719 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) and "Series B Original Issue Price" shall mean \$0.32 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).

(b) Upon completion of the distribution required by subsection (a) of this Section 2, all of the remaining Proceeds 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 (assuming full conversion of all such Preferred Stock pursuant to the provisions of subsection 4(a) hereof), but without giving effect to the issuance of Common Stock in such conversion pursuant to clause (ii) of the first sentence of subsection 4(a)).

(c) 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, (i) with respect to the Series A Preferred Stock, such amount shall not include all unpaid Series A Accruing Dividends if, upon such Liquidation Event, such holders of Series A Preferred Stock shall be entitled to receive pursuant to subsections 1(a) and 1(c) above, excluding amounts attributable to any unpaid Series A Accruing Dividends, an aggregate amount of at least \$0.80 per share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) and (ii) with respect to the Series B Preferred Stock, such amount shall not include all unpaid Series B Accruing Dividends if, upon such Liquidation Event, such holders of Series B Preferred Stock shall be entitled to receive pursuant to subsections 1(b) and 1(c) above, excluding amounts attributable to any unpaid Series B Accruing Dividends, an aggregate amount of at least \$0.96 per share of Series B Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like).

(d) (i) 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 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), (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 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 vote or written consent of the holders of two-thirds of the outstanding Preferred Stock.

(i) In any Liquidation Event, if Proceeds received by this corporation or its stockholders is other than cash, its value will be deemed its fair market value. Fair market value for this purpose shall be calculated 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 National 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 Board of Directors of this corporation and the holders of at least two-thirds of the then outstanding shares of Preferred Stock.

(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 Board of Directors of this corporation and the holders of at least two-thirds of the then outstanding shares of Preferred Stock.

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

(ii) 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 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) 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. 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 holders of at least two-thirds of the then outstanding shares of Preferred Stock.

3. Redemption.

(a) This corporation will, to the extent it may lawfully do so and subject to the conditions set forth below, within ninety (90) days after the receipt by this corporation of a written request from the holders of at least two-thirds of the then outstanding Preferred Stock made on or after May 3, 2009 that all of the then outstanding shares of Preferred Stock be redeemed, redeem in three (3) annual installments (each payment date being referred to herein as a "Redemption Date") the then outstanding shares of Preferred Stock by paying in cash therefor a sum per share (the "Redemption Price") equal to the greater of (A) (i) the applicable Original Issue Price for each series of Preferred Stock plus (ii) all Accruing Dividends accrued but unpaid thereon on each series of Preferred Stock, whether or not declared, plus (iii) any other declared but unpaid dividends on such shares pursuant to subsection 1(c) or (B) the applicable Fair Market Value (as defined below). The number of shares of Preferred Stock that this corporation shall be required to redeem on any one Redemption Date shall be equal to the amount

determined by dividing (i) the aggregate number of shares of Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Any redemption of Preferred Stock effected pursuant to this subsection 3(a) shall be made on a pro rata basis among the holders of Preferred Stock (and proportional with respect to each series of Preferred Stock) in proportion to the aggregate Redemption Price each such holder of Preferred Stock would otherwise be entitled to receive on the applicable Redemption Date. For purposes of this Section 3, the "Series A Fair Market Value" shall mean the fair market value of a share of Series A Preferred Stock as of the date of the written notice delivered pursuant to subsection 3(b) as determined by the Board of Directors of this corporation and two-thirds of the then outstanding shares of Series A Preferred Stock and the "Series B Fair Market Value" shall mean the fair market value of a share of Series B Preferred Stock as of the date of the written notice delivered pursuant to subsection 3(b) as determined by the Board of Directors of this corporation and two-thirds of the then outstanding shares of Series B Preferred Stock. If such parties cannot agree on the applicable Fair Market Value, the fair market value of a share of Series A Preferred Stock and/or Series B Preferred Stock shall be determined by an appraiser (the "Appraiser") who is a senior member of the American Society of Appraisers experienced in the appraisal of software companies or a nationally recognized investment banker who is an NASD member and is experienced in the appraisal of software companies. The applicable Fair Market Value shall be calculated by the Appraiser without regard for any restrictions on liquidity or the nature of any minority interest, but shall reflect the relative rights and privileges of each series of the Preferred Stock. The fees of the Appraiser shall be paid by this corporation. The applicable Fair Market Value pursuant to this subsection 3(a) shall be determined within sixty (60) days of the date of the redemption request.

(b) At least fifteen (15) but no more than thirty (30) days prior to each Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of 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 the shares of Preferred Stock to be redeemed from such holder, the 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 (the "Redemption Notice"). Except as provided in subsection (3)(c), 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 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.

(c) From and after each Redemption Date, unless there shall have been a default in payment of the 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 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 Redemption Price that each such holder would be entitled to receive pursuant to Section 3(a). The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein (including the right to Accruing Dividends which shall continue to accrue and compound until such shares of Preferred Stock are redeemed). 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.

(d) On or prior to each Redemption Date, this corporation shall deposit the Redemption Price of all shares of Preferred Stock designated for redemption on such Redemption Date in the Redemption Notice, and not yet redeemed or converted, with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to publish the notice of redemption thereof and pay the Redemption Price for such shares to their respective holders on or after the Redemption Date, upon receipt of notification from this corporation that such holder has surrendered his, her or its share certificate to this corporation pursuant to subsection (3)(b) above. As of the date of such deposit (even if prior to the Redemption Date), the deposit shall constitute full payment of such shares to their holders, and from and after the date of the deposit, the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the rights to receive from the bank or trust corporation payment of the Redemption Price for the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by this corporation pursuant to this subsection (3)(d) for the redemption of shares which are subsequently converted into shares of this corporation's Common Stock pursuant to Article IV(B)(4) hereof prior to the Redemption Date shall be returned to this corporation forthwith upon such conversion. The balance of any moneys deposited by this corporation pursuant to this subsection (3)(d) remaining unclaimed at the expiration of two (2) years following any such Redemption Date shall thereafter be returned to this corporation upon its request expressed in a resolution of its Board of Directors.

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, as provided in subsection 4(b), at any time after the date of issuance of such share and on or prior to the fifth day prior to the Redemption Date, if any, as may have been fixed in any Redemption Notice with respect to such share of the Preferred Stock, and without payment of any additional

consideration thereof, at the office of this corporation or any transfer agent for such stock, into the sum of (i) such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion plus (ii) such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by, as applicable: (A) the price per share of the Common Stock net of underwriting commissions in the case of a public offering, (B) the value of the Common Stock in the transaction in question in case of conversion in connection with a Liquidation Event or (C) the fair market value of a share of Common Stock as mutually agreed by the Board of Directors of this corporation and the holders of at least two-thirds of the then outstanding shares of Preferred Stock in the case of a conversion under circumstances other than those described in the immediately preceding clauses (A) and (B); provided, however, that if such mutual agreement cannot be reached, such fair market value shall be determined by an Appraiser and shall be calculated by the Appraiser without regard for any restrictions on liquidity or the nature of any minority interest, but shall reflect the relative rights and privileges of the Common Stock. The fees of the Appraiser shall be paid by this corporation. The initial Conversion Price per share for the Preferred Stock shall be the Series A Original Issue Price or the Series B Original Purchase Price, as the case may be; provided, however, that the Conversion Price for each series of Preferred Stock 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 into which such Preferred Stock is convertible pursuant to subsection 4(a) 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, (A) the public offering price of which was not less than \$0.96 per share (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like), (B) the net proceeds of which were not less than \$25,000,000 and (C) after which the Common Stock of this corporation is listed on the New York Stock Exchange or the Nasdaq National Market (a "Qualified Public Offering") or (ii) the date specified by written consent or agreement of the holders of two-thirds of the then outstanding shares of Preferred Stock.

(c) Mechanics of Conversion. On or after the date of occurrence of any conversion of Preferred Stock pursuant to subsection 4(b), and in any event within 10 days after receipt of notice, by mail, postage prepaid from this corporation of the occurrence of such event, each holder of record of shares of Preferred Stock being converted shall surrender such holder's certificates evidencing such shares at the office of this corporation or of any transfer agent for the Preferred Stock specified by this corporation, and shall thereupon be entitled to receive certificates evidencing the number of shares of Common Stock into which such shares of Preferred Stock are converted and cash as provided in subsection 4(g) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. On the date of the occurrence of any conversion of Preferred Stock pursuant to Section 4(b), each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered to this corporation, that notice from this corporation shall not have been received by any holder of record of shares of Preferred Stock or

that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of each series of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, on or after the date upon which this 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 Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series of Preferred Stock in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus 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 the denominator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus 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 the Series A Preferred Stock issued and outstanding on May 3, 2004, (3) Common Stock issuable upon conversion of the Series B Preferred Stock issued and outstanding on November 21, 2006, (4) Common Stock issuable upon exercise of stock options issued under this corporation's 2003 Stock Plan as in effect on November 21, 2006 (the "2003 Stock Plan") and (5) Common Stock issuable upon exercise (and, in the case of warrants to purchase Preferred Stock, conversion) of warrants outstanding on November 21, 2006. Shares described in (1) through (5) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(A) No adjustment of the Conversion Price for any series of Preferred Stock shall be made in an amount less than \$.00001 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 shall be made at the end of 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 (E)(3) and (E)(4), no adjustment of the Conversion Price for any series of Preferred Stock pursuant to this subsection 4(d)(i) shall have the effect of increasing such Conversion Price above the Conversion Price in effect immediately prior to such adjustment with respect to such series of Preferred Stock; provided, however, that in no event will such Conversion Price be increased above the Conversion Price for such series of Preferred Stock in effect on the original issuance date of such series of Preferred Stock.

(B) 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.

(C) 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 in good faith by the Board of Directors of this corporation, or if the holders of at least two-thirds of the then outstanding Preferred Stock request, as determined by independent accountants of recognized standing promptly selected by this corporation to value such property, whereupon such value shall be given to such consideration and shall be recorded on the books of this corporation with respect to receipt of such property. In the case of the issuance of the Additional Stock together with other shares or securities or other assets of this corporation for consideration which covers both, the consideration for such Additional Stock shall be deemed to be the proportion of such consideration received for such Additional Stock computed as provided in subsection (C) and this subsection (D), as determined in good faith by the Board of Directors.

(D) 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 (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 (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 for each series of Preferred Stock, 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 for each series of Preferred Stock, 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 (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).

(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:

(A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof;

(B) up to 9,646,053 shares of Common Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) issued to employees, directors, consultants and other service providers for the primary purpose of soliciting or retaining their services pursuant to the 2003 Stock Plan;

(C) Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding on the Filing Date;

(D) Common Stock issued or deemed issued 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);

(E) Common Stock issued to persons or entities with which this corporation has business relationships, provided such issuances are for other than primarily equity financing purposes and are approved by at least two-thirds of the outstanding Preferred Stock; or

(F) Common Stock issued pursuant to any equipment leasing arrangement or debt financing from a bank or similar institution, provided such financing is primarily for non-equity purposes and is approved by at least two-thirds of the outstanding Preferred Stock.

(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 for 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 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.

(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 each series of 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 Preferred Stock 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. If at any time or from time to time there shall be a recapitalization 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 Preferred Stock shall thereafter be entitled to receive upon conversion of their shares of 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 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 Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect for each series of Preferred Stock and the number of shares purchasable upon conversion of such 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 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 the corporation shall pay in cash the fair market value of any fractional shares as determined in good faith by the Board of Directors of this corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of 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 for a series of 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 such Preferred Stock 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 such series of Preferred Stock 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 such series of 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 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; 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 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, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of two-thirds of the then outstanding shares of such series of Preferred Stock. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

5. Voting Rights.

(a) General Voting Rights. 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 then be converted, 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, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this corporation, and except as provided in subsection 5(b) below with respect to the election of directors by the separate class vote of the holders of Common Stock, shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. 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 at least 2,000,000 shares of Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) remain outstanding, the holders of such shares of Preferred Stock shall be entitled to elect two (2) directors of this corporation (the "Preferred Directors") at any election of directors. The holders of outstanding Common Stock shall be entitled to elect two (2) directors 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 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, any such vacancy will be filled by the holders of such class or series of stock by (i) voting for their own designee to fill such vacancy at a meeting of the Company's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. 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 a two-thirds 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 a vote of the holders of two-thirds of that class or series of stock represented at the meeting or pursuant to written consent.

6. Protective Provisions. So long as any shares of Preferred Stock remain outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least two-thirds of the then outstanding shares of Preferred Stock:

(a) amend, alter, or waive any provision of this corporation's Amended and Restated Certificate of Incorporation or Bylaws (whether by amendment to this corporation's Amended and Restated Certificate of Incorporation or Bylaws or by reclassification, merger, consolidation, reorganization or otherwise) to (i) alter, change or repeal the rights, preferences or privileges of the shares of Preferred Stock or (ii) adversely affect the holders of Preferred Stock as a class;

(b) increase or decrease the total number of authorized shares of Preferred Stock;

(c) authorize or issue, or obligate itself to authorize or issue, any equity security (including any other security convertible into or exercisable for any such equity security) having rights, preferences or privileges that are equal to or superior to the Preferred Stock;

(d) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to (i) 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 or (ii) the redemption of any share or shares of Preferred Stock in accordance with Section 3;

(e) authorize, pay or declare a dividend (other than dividends on the Common Stock payable solely in Common Stock) on any shares of the capital stock of this corporation other than the authorization and payment of dividends in accordance with Section 1;

(f) authorize or issue, or obligate itself to issue any debt instrument(s) convertible into Common Stock;

(g) enter into any merger, acquisition or consolidation with any other person or entity, whether or not the Company or a subsidiary of the Company is the surviving entity;

(h) purchase or acquire (whether by merger, consolidation or otherwise) the capital stock or other proprietary interest, directly or indirectly, in any other entity or related entities, or any business or assets of another person, entity or related entity or enter into or commit to enter into or make any investment in any joint ventures or partnerships;

(i) sell, transfer or dispose of, in any transaction or series of related transactions, more than twenty-five percent (25%) of the fair market value the Company's assets; provided, however, that this restriction shall not apply to sales of inventory and other sales which occur in the ordinary course of business;

(j) enter into any transaction with any stockholder holding at least ten percent (10%) of the outstanding capital stock of the Company, director or officer of the Company or any person or entity who, directly or indirectly, controls, is controlled by, or is under common control with any current stockholder holding at least ten percent (10%) of the outstanding capital stock of the Company, director or officer of the Company, except for employment agreements approved by the Board of Directors (including both of the Preferred Directors);

(k) enter into any debt or lease transaction other than working capital loans, equipment leases and other similar transactions which occur in the ordinary course of business;

(l) change the authorized number of directors of the Company;

(m) adopt any material alteration in the Company's business plan in effect at such time unless approved by the Board of Directors (including both of the Preferred Directors);

(n) hire, terminate, replace or reassign a member of the Company's senior management unless approved by the Board of Directors (including both of the Preferred Directors);

(o) adopt any material alteration in the Company's budget in effect at such time unless approved by the Board of Directors (including both of the Preferred Directors);

(p) issue equity securities or securities convertible into equity securities to employees, directors, consultants and other service providers pursuant to plans or agreements approved by the Board of Directors unless approved by the Board of Directors (including both of the Preferred Directors);

(q) create any new stock option plan or increase the number of shares of Common Stock reserved for grant under the Company's 2003 Stock Option Plan to an amount greater than Nine Million Six Hundred Forty-Six Thousand Fifty-Three (9,646,053) shares of Common Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like); or

(r) issue equity securities or securities convertible into equity securities other than the issuance of (i) equity securities or securities convertible into equity securities pursuant to subsection (p) above and (ii) the issuance of Series B Preferred Stock pursuant to the Series B Preferred Stock Purchase Agreement.

7. Status of Redeemed or Converted Stock. Notwithstanding anything to the contrary contained in Section 6(b), 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 cancelled and shall not be issuable by this corporation. The Amended and Restated Certificate of Incorporation of this corporation shall be appropriately amended 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 and subject to the rights of the holders of Preferred Stock pursuant to Sections 1(a) and 1(b), 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. 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 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 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

Elections of directors need not be by written ballot.

ARTICLE VII

Meetings 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 VIII

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 that 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 any improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this Article VIII to authorize corporate 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 General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article VIII by the stockholders of this corporation shall not adversely affect any right or protection of a director of this corporation 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 occurring prior to, such repeal or modification.

ARTICLE IX

This corporation reserves the right to amend, alter, change or repeal any provision contained in this 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 X

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation 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, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification 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 amendment, repeal or modification.

ARTICLE XI

Notwithstanding anything to the contrary contained herein, this corporation renounces any interest or expectancy of this corporation in, or in being offered an opportunity to participate in, any business opportunity or business opportunities presented to the Preferred Directors.

No amendment or repeal of this Article XI shall apply to or have any effect on the liability or alleged liability of any Preferred Director for or with respect to any opportunities of which such Preferred Director becomes aware prior to such amendment or repeal.

* * *

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 said Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Restated Certificate of Incorporation as amended by the Amendments, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 21st day of November, 2006.

/s/ Frank V. Azzolino

Frank V. Azzolino

President & Chief Executive Officer