

**FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF**

ACORN CARDIOVASCULAR, INC.

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

Acorn Cardiovascular, Inc., a corporation organized and existing under any 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 Corporation was originally incorporated on August 22, 2002, under
the name Acorn Acquisition, Inc. pursuant to the General Corporation Law.

SECOND: That the board of directors of the Corporation (the "Board of Directors")
duly adopted resolutions proposing to amend and restate the Fourth Amended and
Restated Certificate of Incorporation of the Corporation declaring such amendment and
restatement (the "Restated Certificate") to be advisable and in the best interests of the
Corporation and its stockholders, and authorizing the appropriate officers of this
Corporation to solicit the consent of the stockholders therefor, which resolution setting
forth the proposed amendment and restatement is as follows:

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

ARTICLE 1. NAME

The name of the corporation is "Acorn Cardiovascular, Inc." (the "Corporation").

ARTICLE 2. REGISTERED OFFICE AND AGENT

The address of the registered office of the Corporation is c/o Corporation Service
Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, County of New
Castle, and the name of its registered agent is Corporation Service Company.

ARTICLE 3. AUTHORIZED SHARES

3.1. Designation and Number. The aggregate number of authorized shares of the
Corporation is 85,800,000 shares, \$.01 par value, of which 33,000,000 shares shall be designated
Series X Convertible Preferred Stock (the "Series X Preferred Stock"), 7,300,000 shares shall be
designated Series AA Convertible Preferred Stock (the "Series AA Preferred Stock" and,
together with the Series X Preferred Stock, the "Preferred Stock") and 45,500,000 shares shall be
designated Common Stock. Unless otherwise designated in this amended and restated certificate
by the Board of Directors, all issued shares shall be deemed to be Common Stock with equal
rights and preferences. The rights, preferences, privileges and restrictions granted to and

imposed upon the Common Stock, the Series X Preferred Stock and the Series AA Preferred Stock are set forth in this Restated Certificate.

Prior to the filing of the Restated Certificate, the Corporation previously authorized, issued and had outstanding six different classes of Preferred Stock: Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock, Series D Convertible Preferred Stock, Series E Convertible Preferred Stock and Series F Convertible Preferred Stock (collectively, the "Old Preferred Stock"). Upon the effective date of this Restated Certificate, each one (1) share of Old Preferred Stock (other than the Series E Convertible Preferred Stock) shall be converted into one (1) share of Common Stock and each six (6) shares of Series E Convertible Preferred Stock shall be converted into five (5) shares of Common Stock (all such converted stock referred to as the "Recapitalized Stock") and the Old Preferred Stock shall be eliminated (the "Recapitalization"). Such shares of Common Stock shall be deemed to be issued and outstanding for all purposes as of the date of such Recapitalization, and the stock certificates representing shares of the Old Preferred Stock issued and outstanding as of the effective time of the Recapitalization shall thereafter, automatically and without the necessity of presenting the same for exchange, represent the number of shares of Common Stock into which such shares have been converted. No fractional shares will be issued in connection with the Recapitalization. In lieu of issuing any fractional shares, the number of shares issued to any holder of shares of Recapitalized Stock who otherwise would be entitled to a fractional share shall be rounded up to the nearest whole number of shares of the Corporation's Common Stock.

Upon the effective date of this Restated Certificate and immediately after the Recapitalization, each 64 shares of the Corporation's Common Stock issued and outstanding, including the Recapitalized Stock, shall automatically be combined, reclassified and changed into one share of the Corporation's Common Stock (the "Reverse Stock Split"). No fractional shares will be issued in connection with the Reverse Stock Split. After aggregating all shares issued to any stockholder in connection with the Reverse Stock Split, any stockholder who would otherwise be entitled to receive a fractional share as a result of the Reverse Stock Split shall receive in lieu of such fractional share, cash in an amount equal to such fraction multiplied by the fair market value of the Common Stock at the effective time of the Reverse Stock Split as determined by the Board of Directors of the Corporation. Stock certificates representing shares of the Company's Common Stock issued and outstanding as of the effective time of the Reverse Stock Split shall thereafter, automatically and without the necessity of presenting the same for exchange, represent the number of shares (rounded down to the nearest whole share) obtained by dividing the number of shares of Common Stock represented by such certificates prior to the effective time of the Reverse Stock Split by 64.

3.2. Dividends. Following the date of the issuance of any shares of Preferred Stock and so long as any shares of Preferred Stock are outstanding, dividends at a rate per annum of \$0.08 per share shall accrue on such shares of Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that such

Accruing Dividends shall be payable only upon the earliest to occur of (i) when, as and if declared by the Board of Directors, (ii) a mandatory redemption pursuant to Section 3.4 and (iii) a Liquidation Event. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation unless (in addition to the obtaining of any consents required elsewhere in the Restated Certificate) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to the amount of the aggregate Accruing Dividends then accrued on such share of Preferred Stock and not previously paid. All dividends paid with respect to shares of the Preferred Stock pursuant to this Section 3.2 shall be declared and paid *pro rata* (except as set forth in Section 3.3) based upon the amount of Accruing Dividends then due with respect to each share to all the holders of the shares of Preferred Stock outstanding as of the applicable record date.

3.3. Liquidation Preference.

(a) Liquidation Preference. In the event of a liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (each such event, a "Liquidation"):

(i) Series X Preference. The holders of Series X Preferred Stock shall be entitled to receive out of the assets of the Corporation, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series AA Preferred Stock or the Common Stock, an amount per share (the "Series X Liquidation Amount") equal to (A) \$1.00 per share (the "Original Issue Price") of Series X Preferred Stock (as adjusted for stock splits, stock dividends, combinations, recapitalizations and the like) multiplied by 1.5, plus (B) any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon; provided, however, that if the assets of the Corporation are insufficient to pay the aggregate Series X Liquidation Amount to all holders of Series X Preferred Stock, the holders of such shares shall share *pro rata* in any such distribution in proportion to the full amounts to which they would otherwise be entitled.

(ii) Series AA Preference. After payment of the aggregate Series X Liquidation Amount to the holders of Series X Preferred Stock pursuant to Section 3.3(a)(i) and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Common Stock, the holders of Series AA Preferred Stock shall be entitled to receive out of the assets of the Corporation an amount per share (the "Series AA Liquidation Amount") and, together with the Series X Liquidation Amount, the "Preferred Liquidation Amount") equal to the Original Issue Price per share of Series AA Preferred Stock (as adjusted for stock splits, stock dividends, combinations, recapitalizations and the like), plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon; provided, however, that if the assets of the Corporation are insufficient to pay the Series AA Liquidation Amount to all holders of Series AA Preferred Stock, the holders of such shares shall share *pro rata* in any such distribution in proportion to the full amounts to which they would otherwise be entitled.

(iii) Remainder. After the payment of the Preferred Liquidation Amount, the holders of Preferred Stock shall share with the holders of Common Stock in the remaining assets on a pro rata basis and on an as-if-converted basis.

(b) Deemed Liquidations. A (i) consolidation, merger with any other entity (other than a wholly-owned subsidiary of the Corporation) or any transaction or series of related transactions in which the Corporation is not the surviving person, (ii) transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of by the Corporation or its stockholders to a single person or group of affiliated persons, or (iii) transaction or series of related transactions pursuant to which the Corporation sells, pledges, licenses or otherwise transfers all or substantially all of the assets of the Corporation to a third party (each, a "Deemed Liquidation") shall be deemed to be a liquidation of the Corporation.

(c) Value of Consideration. In the event of a Deemed Liquidation, if the consideration received by the Corporation is other than cash, its value will be deemed to be its fair market value as follows:

(i) No Restrictions. Securities not subject to an investment letter or other similar restrictions on free marketability covered by Section 3.3(c)(ii) below:

(A) If traded on a securities exchange or 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 thirty (30) calendar day period ending three (3) days prior to the closing;

(B) 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 thirty (30) calendar day period ending three (3) days prior to the closing; and

(C) 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 the Corporation and the holders of at least 66-2/3% of all the then-outstanding shares of Series X Preferred Stock.

(ii) Restrictions. The method of valuation of securities subject to an 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 Section 3.3(c)(i) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors of the Corporation and the holders of at least 66-2/3% of all the then-outstanding shares of Series X Preferred Stock.

(d) Compliance. In the event the requirements of Sections 3.3(b) and 3.3(c) are not complied with, the Corporation shall forthwith either:

(i) cause the closing of the Deemed Liquidation to be postponed until such time as the requirements of Sections 3.3(b) and (c) have been complied with; or

(ii) cancel the Deemed Liquidation, 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 Section 3.3(e) hereof.

(e) Notice. The Corporation shall give each holder of record of Preferred Stock written notice of such impending Deemed Liquidation no later than twenty (20) days prior to the stockholders' meeting called to approve such Deemed Liquidation, or thirty (30) days prior to the closing of such Deemed Liquidation, whichever is earlier, and shall also notify such holders in writing of the final approval of such Deemed Liquidation. The first of such notices shall describe the material terms and conditions of the impending Deemed Liquidation and the provisions of this Section 3.3, and the Corporation shall thereafter give such holders prompt notice of any material changes. The Deemed Liquidation shall in no event take place sooner than thirty (30) 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 such periods may be shortened upon the written consent of the holders of Series X Preferred Stock that are entitled to such notice of rights or similar notice rights and that represent at least 66-2/3% of all the then-outstanding shares of Series X Preferred Stock, but not to the extent of having the effect of depriving any holder of Preferred Stock actual notice of the impending Deemed Liquidation to the extent that such holder is actually prejudiced as a consequence.

3.4. Redemption.

(a) Redemption Right. Shares of the Series X Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Original Issue Price per share, plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the "Redemption Price"), in three equal annual installments (each payment date being referred to herein as a "Redemption Date") commencing not more than ninety (90) days after the receipt by the Corporation at any time on or after December 14, 2012 of a written request from the holders of not less than 66-2/3% of the then-outstanding Series X Preferred Stock. On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series X Preferred Stock owned by each holder, that number of outstanding shares of Series X Preferred Stock determined by dividing (i) the total number of shares of Series X 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).

(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 preceding the day on which notice is given) of the Series X Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for

such holder, notifying such holder of the redemption to be effected on the applicable Redemption Date, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in Section 3.4(c), on or after each Redemption Date, each holder of Series X Preferred Stock to be redeemed on such Redemption Date shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the 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 canceled. In the event that less than all of the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) Consequences. 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 Series X Preferred Stock designated for redemption on such Redemption Date in the Redemption Notice as holders of such Series X 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 the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series X Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series X 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 to be redeemed on such date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The shares of Series X Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein.

3.5. Voting Rights. The holders of record of Preferred Stock shall be entitled to notice of and to attend all meetings of the stockholders of the Corporation, and each holder shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining the stockholders entitled to vote. Except as otherwise provided in this Restated Certificate, or as required under the General Corporation Law, the holders of Preferred Stock and Common Stock shall vote together as a single class.

3.6. Series X Voting Rights.

(a) So long as at least twenty-five percent (25%) of the originally issued shares of Series X Preferred Stock, in the aggregate, are outstanding, then

(i) without the affirmative vote or consent of the holders of at least 66-2/3% of the shares of the then-outstanding shares of Series X Preferred Stock, voting or consenting separately as a single class, the Corporation shall not:

(A) amend the Restated Certificate or the Bylaws of the Corporation in a manner that adversely affects the rights, privileges or preferences of the Series X Preferred Stock;

(B) take any action which would adversely alter or change any of the rights, privileges or preferences of the Series X Preferred Stock, whether by merger, consolidation, recapitalization or otherwise;

(C) authorize, issue or create any new class or series of capital stock, or securities exercisable or convertible into equity securities, having preferences or privileges senior to or on parity with the Series X Preferred Stock;

(D) increase the number of authorized shares of Series X Preferred Stock;

(E) redeem or repurchase any Common Stock without the approval of the Board of Directors, which approval must include the affirmative vote of three of the directors on the Board of Directors elected or appointed by the holders of the Series X Preferred Stock (the "Series X Directors"); provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock at their original cost 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 upon the occurrence of certain events, such as the termination of employment or the proposed assignment, conveyance or transfer of Common Stock received by employees or other eligible participant under any Corporation option or other incentive plan;

(F) take any action that authorizes or is intended to result in a Liquidation (other than a Deemed Liquidation);

(G) authorize the recapitalization or reclassification of the issued and outstanding capital stock of the Corporation, whether by merger, consolidation, recapitalization or otherwise;

(H) declare or pay any dividend or make any other distribution on any shares of capital stock of the Corporation, at any time created and issued, other than to effect a stock split;

(I) increase the authorized number of directors constituting the Board of Directors; or

(J) effect any transaction or series of transactions constituting a Deemed Liquidation.

(ii) without the affirmative approval of a majority of the members of the Board of Directors, which majority shall include at least three of the Series X Directors, the Corporation shall not:

(A) authorize the issuance of any debt if the aggregate indebtedness of the Corporation following such action would exceed \$1,000,000;

(B) authorize any capital expenditures in excess of \$1,000,000;

(C) authorize the creation of, or an increase in the number of shares to be issued pursuant to, any stock option plan;

(D) authorize any acquisition or license transaction with a value in excess of \$1,000,000; or

(E) authorize any pledge of assets or sale of assets with a value in excess of \$1,000,000.

(b) Series AA Voting Rights. So long as at least twenty-five percent (25%) of the originally issued shares of Series AA Preferred Stock, in the aggregate, are outstanding, without the affirmative vote or consent of at least a majority of the shares of the then-outstanding shares of Series AA Preferred Stock, voting or consenting together as a single class, the Corporation shall not:

(i) amend the Restated Certificate or the Bylaws of the Corporation in a manner that adversely affects the rights, privileges or preferences of the Series AA Preferred Stock in a manner materially different from that of the Series X Preferred Stock;

(ii) take any action which would adversely alter or change any of the rights, preferences or privileges of the Series AA Preferred Stock, whether by merger, consolidation, recapitalization or otherwise, in a manner materially different from that of the Series X Preferred Stock;

(iii) authorize, issue or create any new class or series of capital stock, or securities exercisable or convertible into equity securities, having preferences or privileges that are both (A) senior to or on parity with the Series AA Preferred Stock and (ii) junior to the Series X Preferred Stock; or

(iv) increase the number of authorized shares of Series AA Preferred Stock.

3.7. Mandatory Conversion. Each share of Preferred Stock outstanding shall automatically be converted into Common Stock at the then-applicable Conversion Price upon

either (i) the date specified by the election of at least 66-2/3% of the then outstanding shares of Series X Preferred Stock, or (ii) the closing of a firm commitment underwritten public offering pursuant to a Registration Statement on Form S-1 (or any successor form) by the Corporation of its Common Stock in which (A) the aggregate gross proceeds to the Corporation are at least \$70,000,000 and imply a post-offering value of the Company's issued and outstanding capital stock of at least \$200,000,000 and (B) the public offering price is not less than \$4.00 per share (as adjusted from time to time upon the occurrence of any subdivisions, stock-splits, recapitalizations, combinations, stock dividends or changes of Common Stock into a different number of shares of the same or any other class or classes of shares). The Corporation shall give notice to the holders of Preferred Stock of such automatic conversion and may require the surrender of certificates representing such shares before delivering certificates representing the Common Stock issued in such conversion.

3.8. Special Mandatory Conversion.

(a) Trigger Event. In the event that any holder of the outstanding shares of Series X Preferred Stock (a "Series X Holder") does not participate in a Qualified Financing by purchasing in such Qualified Financing, and within the time period specified by the Corporation (provided that the Corporation has given each Series X Holder at least 10 days' prior written notice of, and the opportunity to purchase its Pro Rata Amount), such Series X Holder's Pro Rata Amount, then each share of Series X Preferred Stock held by such Series X Holder shall automatically, and without any further action on the part of such Series X Holder, be converted into shares of Common Stock at the Conversion Price for the Series X Preferred Stock in effect immediately prior to the consummation of such Qualified Financing effective upon, subject to, and concurrently with, the consummation of the Qualified Financing. For purposes of determining the number of shares of Series X Preferred Stock owned by a Series X Holder, and for determining the number of Offered Securities a Series X Holder has purchased or is required to purchase in a Qualified Financing, all shares of Series X Preferred Stock held by Affiliates of such Series X Holder shall be aggregated with such Series X Holder's shares and all Offered Securities purchased by Affiliates of such Series X Holder shall be aggregated with the Offered Securities purchased by such Series X Holder (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). Such conversion is referred to in this Section 3.8(a) as a "Special Mandatory Conversion".

(b) Procedural Requirements. Upon a Special Mandatory Conversion, each Series X Holder whose shares are converted pursuant to Subsection 3.8(a) shall surrender his, her or its certificate or certificates for all such shares (or, if such Series X Holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) 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 Series X Holder is entitled pursuant to this Section 3.8. All rights with respect to the Series X Preferred Stock converted pursuant to Subsection 3.8(a), including the rights, if any, to receive notices and vote (other than as a holder

of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor (or lost certificate affidavit and agreement), to receive the items provided for in the last sentence of this Subsection (b). 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 his, her or its attorney duly authorized in writing.

(c) Effect of Special Mandatory Conversion. Any Series X Preferred Stock converted pursuant to this Section 3.8 shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series X Preferred Stock accordingly.

(d) Definitions. For purposes of this Section 3.8, the following definitions shall apply:

(i) "Affiliate" shall mean, with respect to any holder of shares of Preferred Stock, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, member or employee of such holder and any venture capital fund now or hereafter existing of which the holder is a partner or member which is controlled by or under common control with one or more general partners of such holder or shares the same management company with such holder.

(ii) "Offered Securities" shall mean the equity securities (or securities convertible into or exercisable for equity securities) of the Corporation set aside by the Board of Directors for purchase by holders of outstanding shares of Series X Preferred Stock in connection with a Qualified Financing, and offered to such holders.

(iii) "Pro Rata Amount" shall mean, with respect to any holder of Series X Preferred Stock, the aggregate dollar amount of the Offered Securities to be issued pursuant to the Qualified Financing, multiplied by the quotient obtained by dividing (A) the number of shares of outstanding Series X Preferred Stock held by such holder by (B) the aggregate number of outstanding shares of Series X Preferred Stock.

(iv) "Qualified Financing" shall mean (A) a transaction, approved by a majority of the outside directors of the Board of Directors, involving the issuance or sale of equity securities (or securities convertible into or exercisable for equity securities) of the Corporation which would result in at least \$4,000,000 in aggregate gross proceeds to the Corporation provided that a majority of the outside directors of the Board of Directors certifies that (I) the Corporation requires at least \$4,000,000 in equity financing and has insufficient cash resources to fund more than four months of budgeted operations from the date of the anticipated closing of such transaction, and (II) the Corporation made commercially reasonable efforts to enter into a term sheet for a financing to result in at

least \$5,000,000 in aggregate gross proceeds to the Corporation by either approaching no fewer than four nationally recognized private equity investors familiar with the Corporation's industry or by engaging a nationally recognized investment banking firm as a private placement agent, or (B) a Second Tranche Financing.

(v) "Second Tranche Financing" shall mean the purchase by the holders of shares of Series X Preferred Stock of a number of additional shares of Series X Preferred Stock equal to 50% of the number of shares of Series X Preferred Stock purchased by such holder under, and as required under Section 1.3(b) of, the Series X Convertible Preferred Stock Purchase Agreement, dated on or about the date hereof.

3.9. Optional Conversion: Mechanics.

(a) Conversion Ratio. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time into such number of shares of Common Stock equal to the number obtained by dividing the Original Issue Price per share of such series of Preferred Stock by the conversion price computed as hereinafter set forth (the "Conversion Price") in effect for such Preferred Stock at the time of conversion. The initial Conversion Price for the Series X Preferred Stock is \$1.00 per share, and the initial Conversion Price for the Series AA Preferred Stock is \$1.00 per share. The Conversion Prices for the Series X Preferred Stock and the Series AA Preferred Stock are subject to adjustment from time to time as hereinafter provided.

(b) Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series X Preferred Stock pursuant to Section 3.4, the conversion rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the conversion rights for such shares shall continue until such price is paid in full. In the event of a Liquidation or a Deemed Liquidation, the conversion rights of the holders of Preferred Stock shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

(c) Mechanics of Conversion. Conversion rights shall be exercised by the surrender of certificate(s) representing shares of Preferred Stock to be converted to the Corporation at any time during usual business hours at its principal place of business to be maintained by it (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of Preferred Stock), accompanied by written notice that the holder elects to convert such shares of Preferred Stock and specifying the name or names (with address) in which a certificate or certificates for shares of Common Stock are to be issued and (if so required by the Corporation) by a written instrument or instruments of transfer in form reasonably satisfactory to the Corporation duly executed by the holder or its duly authorized legal representative and transfer tax stamps or funds therefor, if required pursuant to Section 3.9(i). All certificates representing shares of Preferred Stock surrendered for conversion shall be delivered to the Corporation for cancellation and canceled by it. As promptly as practicable after the surrender of

any shares of Preferred Stock, the Corporation shall (subject to compliance with the applicable provisions of federal and state securities laws) deliver to the holder of such shares so surrendered certificate(s) representing the number of fully paid and nonassessable shares of Common Stock into which such shares are entitled to be converted. At the time of the surrender of such certificate(s), the person in whose name any certificate(s) for shares of Common Stock shall be issuable upon such conversion shall be deemed to be the holder of record of such shares of Common Stock on such date, notwithstanding that the share register of the Corporation shall be then closed or that the certificates representing such Common Stock shall not then be actually delivered to such person. On the date of such optional conversion pursuant to Section 3.9(a) above or of such automatic conversion pursuant to Section 3.7 above, all rights with respect to the shares of Preferred Stock so converted, including the rights, if any, to receive notices and vote, shall terminate, except only the rights of holders thereof to (i) receive certificates for the number of shares of Common Stock into which such shares of Preferred Stock have been converted and (ii) exercise the rights to which they are entitled as holders of Common Stock.

(d) Adjustment to Conversion Price. The Conversion Price is subject to adjustment from time to time as follows:

(i) Dividends. In case the Corporation shall declare a dividend or other distribution upon its shares of Common Stock payable otherwise than in cash out of earnings or surplus (including a dividend payable in shares of Common Stock), then thereafter, each holder of shares of Preferred Stock upon the conversion thereof will be entitled to receive the number of shares of Common Stock into which such Preferred Stock shall be converted and, in addition and without payment therefor, the cash, stock or other securities and other property (including Common Stock) that such holder would have received by way of dividends or distributions (otherwise than out of earnings or surplus) if continuously since the record date for any such dividend or distribution such holder (i) had been the record holder of the number of shares of Common Stock into which such shares of Preferred Stock shall be convertible, and (ii) had retained all dividends or distributions in stock or securities payable in respect of such Common Stock or in respect of any stock or securities paid as dividends or distributions and originating directly or indirectly from such Common Stock.

(ii) Subdivisions and Combinations. In case the Corporation shall at any time subdivide or split its outstanding shares of Common Stock into a greater number of shares (whether by stock split, stock dividend or otherwise), the Conversion Price in effect immediately prior to such subdivision or split shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(iii) Reorganizations. If any capital reorganization or reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with another corporation, limited liability company or other entity, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that

holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for shares of Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby the holders of the Preferred Stock shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified in such reorganization, reclassification, consolidation, sale or merger and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of the Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of Common Stock equal to the number of shares of Common Stock immediately theretofore receivable upon the conversion of the Preferred Stock had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the holders of the Preferred Stock to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price for the Preferred Stock and of the number of shares receivable upon the conversion of the Preferred Stock) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter receivable upon the conversion of the Preferred Stock. The Corporation shall not effect any such consolidation, merger or sale, unless prior to the consummation thereof the surviving corporation (if other than the Corporation), the corporation resulting from such consolidation or the corporation purchasing such assets shall assume by written instrument executed and mailed to the registered holders of the Preferred Stock at the last address of such holders appearing on the books of the Corporation, the obligation to deliver to such holders such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holders may be entitled to receive.

(iv) Below-Conversion Price Issuances. Except as provided below and for (A) issuances of shares of Common Stock upon conversion of Preferred Stock, (B) issuances not to exceed an aggregate of 4,875,000 (i) shares of Common Stock or the grant of options or other purchase or similar rights to employees, officers, directors, advisers, consultants or independent contractors of the Corporation on and after the date hereof pursuant to an option pool or Corporation stock option or incentive plan, and the issuance of such shares of capital stock upon the exercise of such options, (ii) shares of Common Stock, and securities convertible into shares of Common Stock, to certain Corporation suppliers, manufacturers, investment advisors or licensees pursuant to any agreement, letter of intent or other documentation existing as of the date hereof and (iii) shares of Common Stock, and securities convertible into shares of Common Stock to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar non-equity financing transactions (the shares described in (A) and (B) are collectively referred to herein as "Exempt Shares" which shares shall be appropriately adjusted to reflect stock splits, stock dividends, reorganizations, consolidations and similar changes), if and whenever the Corporation shall issue or sell (or be deemed in accordance with this Section 3.9(d)(iv) to have issued or sold) any shares of its Common Stock, issue any right or option to purchase Common Stock or any

security convertible into Common Stock for a consideration per share less than the Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the time of such issuance or sale, then, upon such issuance or sale, the respective Conversion Price for each series of Preferred Stock so affected shall forthwith (except as otherwise provided in this Section 3.9(d)) 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 immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to Section 3.9(d)(iv)(A) or (B)) 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 immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to Section 3.9(d)(iv)(A) or (B)) plus the number of shares of Common Stock issued or deemed issued pursuant to such sale.

(v) Value of Cash Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(vi) Value of Non-Cash Consideration. In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment; *provided, however*, that if the holders of at least 66-2/3% of all the then-outstanding shares of Series X Preferred Stock disagree with the determination of the Board of Directors, the fair value thereof shall be determined by an independent investment bank of national standing chosen by the Corporation and agreed to by such holders.

(vii) Options, Convertible Securities, etc. In the case of the issuance (whether before, on or after the applicable purchase date) 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 all purposes of this Section 3.9(d):

(A) The aggregate maximum number of shares of Common Stock deliverable upon exercise (to the extent then exercisable) 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 Sections 3.9(d)(v) and (vi)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(B) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (to the extent then convertible or exchangeable) 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 the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or declared but unpaid dividends), plus the minimum additional consideration, if any, to be received by the Corporation 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 Section 3.9(d)(v) and (vi)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of Section 3.9(d)(iii)), the Conversion Price of the 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; provided, however, that (i) no readjustment pursuant to this clause shall have the effect of increasing the Conversion Price to an amount which exceeds such Conversion Price on the original adjustment date and (ii) 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.

(D) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the 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 (unless such options or rights were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of Section 3.9(d)(iii)), 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; provided, however, that no readjustment pursuant to this clause shall have the effect of increasing the

Conversion Price to an amount which exceeds such Conversion Price on the original adjustment date.

(viii) De Minimis Adjustments. No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account (A) 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 (B) at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward or (C) in the event of a conversion pursuant to either Section 3.7 or 3.9 hereof. Except to the extent provided for in Section 3.9(d)(ii) and Sections 3.9(d)(vii)(C) and (D)), no adjustment of such Conversion Price pursuant to this Section 3.9(d) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ix) Waiver and Modification. The antidilution provisions of this Section 3.9(d) may be waived or modified by the affirmative vote of the holders of at least 66-2/3% of the then-outstanding shares of Series X Preferred Stock voting as a single class.

(e) Notice Regarding Conversion Price Adjustments. Upon any adjustment of the Conversion Price for the Preferred Stock, then and in each such case the Corporation shall promptly give written notice thereof, by first-class mail, postage prepaid, addressed to each registered holder of the Preferred Stock at the addresses of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price resulting from such adjustment and the increase or decrease, if any, in the number of shares receivable at such price upon the conversion of the Preferred Stock, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

(f) Other Notices. In case at any time:

(i) the Corporation shall pay any dividend payable in stock upon its Common Stock or make any distribution (other than regular cash dividends) to the holders of its Common Stock;

(ii) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;

(iii) there shall be any capital reorganization, reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with, or sale of all or substantially all of its assets to, another corporation; or

(iv) there shall be a Liquidation;

then, in any one or more of said cases, the Corporation shall give written notice, by first-class mail, postage prepaid, addressed to each holder of the Preferred Stock at the

addresses of such holder as shown on the books of the Corporation. Such notice shall specify (A) in the case of (i) or (ii) above, the date on which the books of the Corporation shall close or a record shall be taken and the date as of which the holders of Common Stock of record shall participate in such dividend, distribution or subscription rights, or (B) in the case of (iii) or (iv) above, the date on which the holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, or Liquidation shall take place, as the case may be. Such written notice shall be given at least twenty (20) days prior to the action in question and not less than twenty (20) days prior to the record date or the date on which the Corporation's transfer books are closed in respect thereto.

(g) Common Stock Defined. As used in this Section 3.9, the term "Common Stock" shall mean and include the Corporation's presently authorized Common Stock and shall also include any capital stock of any class of the Corporation hereafter authorized which shall have the right to vote on all matters submitted to the stockholders of the Corporation and shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon a Liquidation; provided, however, that the shares receivable pursuant to conversion of the Preferred Stock shall include shares designated as Common Stock as of the date of issuance of such Preferred Stock, or, in case of any reclassification of the outstanding shares thereof, the stock, securities or assets provided for in Section 3.9(d)(iii) above.

(h) Reserve Shares. The Corporation shall at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Preferred Stock would exceed the total number of shares of Common Stock then authorized by the Corporation's Certificate of Incorporation.

(i) No Conversion Tax or Charge. The issuance or delivery of certificates for Common Stock upon the conversion of shares of Preferred Stock shall be made without charge to the converting holder of shares of Preferred Stock for such certificates or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or (subject to compliance with the applicable provisions of federal and state securities laws) in such names as may be directed by, the holders of the shares of Preferred Stock converted; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer

involved in the issuance and delivery of any such certificate in a name other than that of the holder of the shares of Preferred Stock converted, and the Corporation shall not be required to issue or deliver such certificate unless or until the person or persons requesting the issuance or delivery thereof shall have paid to the Corporation the amount of such tax or shall have established to the reasonable satisfaction of the Corporation that such tax has been paid.

(j) No Impairment. The Corporation will not, by amendment of the Restated Certificate 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 3.9 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

(k) Certain Remedies. Any registered holder of Preferred Stock shall be entitled to an injunction or injunctions to prevent breaches of the provisions of the Restated Certificate and to enforce specifically the terms and provisions thereof in any court of the United States or any state thereof having jurisdiction, this being in addition to any other remedy to which such holder may be entitled at law or in equity.

3.10. Common Stock. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested with the Common Stock.

ARTICLE 4. NO CUMULATIVE VOTING

There shall be no cumulative voting by the stockholders of the Corporation. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Restated Certificate) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

ARTICLE 5. NO PREEMPTIVE RIGHTS

Except for contractual preemptive rights granted to holders of Series X Preferred Stock and Series AA Preferred Stock, the stockholders of the Corporation shall not have any preemptive rights to subscribe for or acquire securities or rights to purchase securities of any class, kind, or series of the Corporation.

ARTICLE 6. DIRECTORS: STOCKHOLDERS

Any action required or permitted to be taken at a meeting of the Board of Directors may be taken by a written action signed, or counterparts of a written action signed in the aggregate by all of the directors.

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

A director of the Corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to the 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 the 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, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article 6, or the adoption of any provision of this Restated Certificate inconsistent with this Article 6, by the stockholders of the Corporation shall not apply to or adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE 7. INDEMNIFICATION

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which the General Corporation Law permits the 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 the Corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article 7 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 the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such amendment, repeal or modification.

ARTICLE 8. CORPORATE OPPORTUNITY

To the maximum extent permitted from time to time under the law 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 being presented to its officers, directors or stockholders, other than (i) those officers, directors or stockholders who are employees of the Corporation and (ii) those opportunities demonstrated by the Corporation to have been presented to such officers, directors or stockholders expressly as a result of their activities as a director, officer or stockholder of the Corporation. No amendment or repeal of this Article 8 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 which such officer, director or stockholder becomes aware prior to such amendment or repeal.

ARTICLE 9. PURPOSE

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.

IN WITNESS WHEREOF, the undersigned has executed this Restated Certificate on behalf of the Corporation on this 17th day of December, 2007.

ACORN CARDIOVASCULAR, INC.

By: 

Name: Steve Anderson

Title: President