

State of Delaware
Secretary of State
Division of Corporations
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CERTIFICATE OF INCORPORATION

OF

AETHON, INC.

The undersigned natural person, acting as an incorporator of a corporation under the Delaware General Corporation Law (the "DGCL"), hereby adopts the following Certificate of Incorporation for such corporation:

ARTICLE ONE

The name of the corporation is Aethon, Inc. (the "Company").

ARTICLE TWO

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

ARTICLE THREE

The purpose for which the Company is organized is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE FOUR

A. Authorized Capital Stock. The aggregate number of shares of capital stock which the Company shall have the authority to issue is 50,283,051, consisting of: (1) 30,007,867 shares of Common Stock, \$0.001 par value per share, of the Company ("Common Stock"); (2) 20,275,184 shares of Preferred Stock, \$0.001 par value per share, of the Company ("Preferred Stock"), consisting of (a) 2,918,024 shares of Series A Preferred Stock, \$0.001 par value per share, of the Company ("Series A Preferred Stock"); (b) 4,266,919 shares of Series B Preferred Stock, \$0.001 par value per share, of the Company ("Series B Preferred Stock"); and (c) 13,090,241 shares of Series C Preferred Stock, \$0.001 par value per share, of the Company ("Series C Preferred Stock"). The Series B Preferred Stock and Series C Preferred are sometimes referred to herein as the "Series B and C Stock" or the "Series B or C Stock", as the case may be.

B. Changes in Authorized Capital Stock. Subject to the specific rights, preferences or privileges of any class of stock as set forth herein, the number of authorized shares of any such class or classes may be increased or decreased (but not below the number of shares of such class or classes then outstanding) by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Company (voting together as a single class), irrespective of the provisions of Section 242(b)(2) of the DGCL.

C. Common Stock Provisions.

1. Dividend Rights.

The holders of Common Stock are not entitled to receive any fixed or set dividend. The holders of Common Stock shall receive dividends only at such times and in such amounts as may be determined by the Board of Directors of the Company; provided, however, that no such dividend shall be declared or paid unless all accrued and unpaid dividends on the Preferred Stock are paid and the Preferred Stock receive an additional dividend equal in amount to the dividend per share being paid to the holders of the Common Stock as if each share of Preferred Stock had been converted into Common Stock.

2. Voting Rights.

Except as otherwise required by law or expressly provided herein, the holder of each share of Common Stock shall have one vote per share on each matter submitted to a vote of the stockholders of the Company.

3. Liquidation Rights.

The rights of any holder of Common Stock in the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, shall be as set forth in Section D.4 below.

D. Preferred Stock Provisions.

1. Relative Ranking.

With respect to the payment of dividends, and otherwise as specified herein, shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall rank *pari passu* (i.e., equal with respect to right of payment) and shall rank senior (i.e., priority with respect to right of payment) to shares of Common Stock and any other equity security of the Company (together with Common Stock, the "Junior Stock"). With respect to the payment upon liquidation, dissolution or winding up of the Company, and otherwise as specified herein, shares of Series B and C Stock shall rank senior (prior) to shares of Series A Preferred Stock and Junior Stock, and Series A Preferred Stock shall rank senior (prior) to shares of Junior Stock.

2. Dividend Rights.

(a) Subject to and in accordance with Section D.1, the holders of Preferred Stock, in preference to the holders of Junior Stock, shall be entitled to receive, but only out of funds that are legally available therefor, cash dividends (or at the option of the holder, additional shares of Preferred Stock of the applicable series held by such holder, the fair market value of which shall be determined by the Board of Directors in accordance with Section D.8(b)) at the rate of four percent (4%) of the Original Issue Price (as defined below) per annum (the "Preferred Dividend") on each outstanding share of Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The Preferred Dividend shall in any event accrue from the original date of the issuance of such Preferred Stock, whether or not earned or declared, and shall be cumulative and compound at an annual rate (based on a 360 day year). The "Original Issue Price" shall be \$0.61 per share for Series A Preferred Stock, shall be \$0.71 per share for Series B Preferred Stock, and shall be \$0.5368 per share for Series C Preferred Stock. The Preferred Dividend shall be payable to the holders of the Preferred Stock, in preference to and before any distribution or payment shall be made to the holders of any Junior Stock upon the occurrence of any of the following events: (i) with respect to payment of the Preferred Dividend

to the Series B and C Stock only, upon redemption of the Series B and C Stock in accordance with Section D.8, (ii) upon a Qualified Public Offering or a public offering that is not a Qualified Public Offering, (iii) upon a Change in Control, or (iv) upon a liquidation, dissolution or winding up of the Company pursuant to Section D.4.

(b) So long as any shares of Preferred Stock are outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, with respect to any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section D.2(a) above) with respect to the Preferred Stock shall have been paid or declared and set apart. In the event dividends are paid on any share of Junior Stock, an additional dividend shall be paid with respect to all outstanding shares of Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Junior Stock. The provisions of this Section D.2(b) shall not, however, apply to the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock.

3. Voting Rights.

Except as otherwise provided herein or as required by law, the Preferred Stock shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Preferred Stock shall be entitled to such number of votes as shall be equal to the number of shares of Common Stock (including fractional shares) into which such holder's aggregate number of shares of Preferred Stock are convertible (pursuant to Section D.6 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

4. Liquidation Rights.

(a) Series B and C Liquidation Preference. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of Series B and C Stock shall be entitled, before any distribution or payment is made with respect to any shares of Series A Preferred Stock or Junior Stock:

(i) to be paid an amount equal to the Original Issue Price per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares, and without any adjustment related to the applicable Conversion Price) multiplied by the number of shares of Series B or C Stock, as the case may be, then outstanding, plus, in the case of each share of Series B and C Stock, an amount equal to any and all dividends accrued but unpaid thereon, computed to the date payment thereof is made available (the "Series B and C Liquidation Preference"); or

(ii) immediately prior to such event, to elect to convert their shares of Series B or C Stock into Common Stock pursuant to Section D.6.

If upon such liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the assets to be distributed among the holders of Series B and C Stock shall be insufficient to permit payment to the holders of Series B and C Stock of the amount distributable in Section D.4(a), then the entire assets of the Company to be so distributed shall be distributed ratably among the holders of Series B and C Stock based upon the Series B and C Liquidation Preference then owed to such holders.

(b) Series A Liquidation Preference. After full payment of the Series B and C Liquidation Preference has been made to the holders of the Series B and C Stock, the holders of Series A Preferred Stock shall be entitled, before any distribution or payment is made upon any shares of Junior Stock:

(i) to be paid an amount equal to the Original Issue Price per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares, and without any adjustment related to the applicable Conversion Price) multiplied by the number of shares of Series A Preferred Stock then outstanding, plus, in the case of each share of Series A Preferred Stock, an amount equal to any and all dividends accrued but unpaid thereon, computed to the date payment thereof is made available (the "Series A Liquidation Preference", and together with the Series B and C Liquidation Preference, the "Collective Liquidation Preference"); or

(ii) immediately prior to such event, to elect to convert their shares of Series A Preferred Stock into Common Stock pursuant to Section D.6.

If after full payment of the Series B and C Liquidation Preference, the assets to be distributed among the holders of Series A Preferred Stock shall be insufficient to permit payment to the holders of Series A Preferred Stock of the amount distributable in Section D.4(b), then the entire remaining assets of the Company to be so distributed shall be distributed ratably among the holders of Series A Preferred Stock based upon the Series A Liquidation preference then owed to such holders.

(c) After payment of the Collective Liquidation Preference in full, the remaining assets of the Company shall be distributed to the holders of Preferred Stock and Common Stock ratably as if the Preferred Stock had been converted into Common Stock in accordance with Section D.6; provided, however, that the aggregate amount that the Preferred Stock shall receive in connection with the liquidation, dissolution or winding up of the Company, including the Collective Liquidation Preference, shall not exceed: (i) two times (2x) the Collective Liquidation Preference if such payment occurs before March 31, 2005 and (ii) three times (3x) the Collective Liquidation Preference if such payment occurs on or after March 31, 2005.

(d) Written notice of any such liquidation, dissolution or winding up shall be made by the Company, stating a payment date, the amount of any payments and the place where such payments shall be made, shall be given by mail, postage prepaid, or by international courier to non-United States residents, not less than fifteen (15) days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Company.

(e) The following events shall be considered a liquidation, dissolution or winding up of the Company under this Section D.4:

(i) Any consolidation, exchange or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization or transfer of capital stock, in which the stockholders of the Company immediately prior to such consolidation, exchange, merger or reorganization, own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, exchange, merger or reorganization, or any transaction or series of related transactions to

which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Company (an "Acquisition"); or

(ii) A sale, lease or license or other disposition of all or substantially all of the assets of the Company in any transaction or series of related transactions (an "Asset Transfer"); or

(iii) The Company is wound up, liquidated or dissolved, whether voluntary or involuntary.

Any event or occurrence that constitutes an Acquisition or Asset Transfer will also be deemed a "Change in Control."

(f) In the event of such a Change in Control, if the consideration received by the Company is other than cash, the value of such non-cash consideration shall be deemed its fair market value as determined in good faith by the Board of Directors as of the date of such Change in Control. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by Section D.4(f)(ii) below:

(A) 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 quotation system over the thirty (30) 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) 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 and the holders of at least 55% of the voting power of all then outstanding shares of Preferred Stock.

(ii) 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 Section D.4(f)(i)(A) (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors and the holders of at least 55% of the voting power of all then outstanding shares of such Preferred Stock.

5. Restrictions.

So long as at least twenty-five percent (25%) of the shares of Series B or C Stock remain outstanding, without the approval of the holders of at least 60% of the shares of Series B and C Stock then outstanding, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(a) Amend, alter or repeal any provisions of this Certificate of Incorporation or the Bylaws of the Company, including amending, altering or repealing any rights, preferences or privileges of the Preferred Stock;

(b) Purchase or set aside any sums for the purchase of any shares of capital stock of the Company, except for: (i) the purchase of capital stock of the Company from former employees, directors or consultants to the Company upon termination of their status, if each such purchase is made pursuant to an agreement in a form approved by the Board of Directors; or (ii) the making of any redemption of Series B or C Stock pursuant to Section D.8;

(c) Pay any dividend or make any distribution on any shares of Series A Preferred Stock or Junior Stock, except for the Collective Liquidation Preference;

(d) Enter into, consent to, or agree to any liquidation, dissolution or winding up of the Company, or any Change in Control, recapitalization or reclassification involving the Company;

(e) Create or authorize the creation of any additional class or series of shares of capital stock, or increase the authorized number of the Preferred Stock or increase the authorized number of any other class or series of shares of capital stock, or create or authorize any obligation or security convertible into shares of Preferred Stock or into shares of any other class or series of capital stock, whether any such creation, authorization or increase shall be by means of amendment to this Certificate of Incorporation, by an Acquisition, reclassification of capital stock or otherwise;

(f) Increasing or decreasing the size of the Board of Directors to a number other than seven (7) directors;

(g) Adopt, create, materially amend or alter any equity incentive plan (or similar plan or arrangement), increase the number of securities available for options and grants to directors, officers and employees of, or consultants to, the Company in excess of 4,368,051 shares available under the Company's Stock Option Plan (the "SOP"), or amend or alter any existing employment agreement or compensation package or enter into any new employment agreement or provide any new compensation package in excess of \$75,000 per year, without the prior approval of the Board of Directors;

(h) Incur any debt with respect to which the Company is the obligor in excess of \$300,000;

(i) Authorize, enter into, or agree to transfer or sell any of the Company's intellectual property rights, other than intellectual property rights transferred in the ordinary course of business on terms which are approved by the Board of Directors;

(j) Issue any securities of the Company in a public offering pursuant to a registration statement under the Securities Act of 1933, as amended; or

(k) Materially change the nature of the Company's business.

6. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "Conversion Rights");

(a) Optional Conversion; Conversion Price. Each share of Preferred Stock shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Company or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined in accordance with the following:

(i) In the case of the Series A Preferred Stock, by dividing the Original Issue Price for the Series A Preferred Stock by the Series A Conversion Price (as defined below) in effect at the time of

conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series A Preferred Stock without the payment of additional consideration by the holder thereof shall initially be the Original Issue Price for such share of Series A Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series A Preferred Stock is convertible, as hereinafter provided (the "Series A Conversion Price").

(ii) In the case of the Series B Preferred Stock, by dividing the Original Issue Price for the Series B Preferred Stock by the Series B Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series B Preferred Stock without the payment of additional consideration by the holder thereof shall initially be the Original Issue Price for such share of Series B Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series B Preferred Stock is convertible, as hereinafter provided (the "Series B Conversion Price").

(iii) In the case of the Series C Preferred Stock, by dividing the Original Issue Price for the Series C Preferred Stock by the Series C Conversion Price (as defined below) in effect at the time of conversion. The conversion price at which shares of Common Stock shall be deliverable upon conversion of each share of Series C Preferred Stock without the payment of additional consideration by the holder thereof shall initially be the Original Issue Price for such share of Series C Preferred Stock, subject to adjustment, in order to adjust the number of shares of Common Stock into which the Series C Preferred Stock is convertible, as hereinafter provided (the "Series C Conversion Price").

(iv) The Series A Conversion Price, the Series B Conversion Price and the Series C Conversion Price shall sometimes be referred to herein as the "applicable Conversion Price".

The right of conversion with respect to any shares of Preferred Stock which shall have been called for redemption under Section D.8 hereof shall terminate at the close of business on the day fixed for redemption unless the Company shall default in the payment of the redemption price, in which case the right of conversion with respect to such shares shall continue unless and until such redemption price is paid in full.

(b) Mechanics of Optional Conversions. Before any holder of Preferred Stock shall be entitled to convert shares of Preferred Stock into shares of Common Stock, the holder shall surrender the certificate or certificates therefor at the office of the Company or of any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that the holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted and shall state therein the holder's name or the name or names of the holder's nominees in which the holder wishes the certificate or certificates for shares of Common Stock to be issued. On the date of conversion, all rights with respect to the Preferred Stock so converted shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted and cash in an amount equal to all accrued and unpaid dividends on, and any and all other amounts owing with respect to, the shares of Preferred Stock being converted to and including the time of conversion. If so required by the Company, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon the optional conversion of the Preferred Stock, all shares of Preferred Stock being converted by any holder thereof shall be aggregated for the purpose of determining the number of shares of Common Stock to which such holder shall be entitled, and no fractional share of Common Stock shall be issued. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the date of conversion, as reasonably

determined by the Board of Directors in good faith. The Company shall, promptly after surrender of the certificate or certificates for conversion, issue and deliver at such office to such holder of Preferred Stock, or to the holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share and cash in an amount equal to all dividends declared but unpaid thereon and any and all other amounts owing with respect thereto at such time. Unless otherwise specified by the holder in the written notice of conversion, such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(c) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price then in effect, as the case may be, upon the occurrence of either of the following:

(i) at any time upon the affirmative election of the holders of at least seventy-five percent (75%) of the outstanding shares of the Preferred Stock voting together as a separate class, or

(ii) immediately upon the closing of the Company's first firm committed underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company at a price equal to or greater than three times (3x) the Original Issue Price for the Series C Preferred Stock (as adjusted as provided herein) with gross proceeds to the Company of at least \$30 million before expenses ("Qualified Public Offering").

(d) Mechanics of Automatic Conversions. Upon the occurrence of an event specified in Subsection 6(c), the shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that all holders of shares of Preferred Stock being converted shall be given written notice of the occurrence of the event specified in Subsection 6(c) triggering such conversion, including the date such event occurred (the "Mandatory Conversion Date"), and the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Preferred Stock being converted are either delivered to the Company or its transfer agent, or the holder notifies the Company or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. On the Mandatory Conversion Date, all rights with respect to the shares of Preferred Stock so converted shall terminate, except any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, together with cash in an amount equal to all accrued and unpaid dividends on, and any and all other amounts owing with respect to, the shares of Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of the shares of Preferred Stock, the holders of such shares shall surrender the certificates representing such shares at the office of the Company or of its transfer agent. If so required by the Company, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or by the holders attorney duly authorized in writing. Upon surrender of such certificates there shall be issued and delivered to such holder, or to such holder's nominee or nominees promptly at such office, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, together with cash in an amount equal to all dividends declared but unpaid on, and any and all other amounts owing with respect to, the

shares of Preferred Stock converted to and including the time of conversion. Upon the automatic conversion of the Preferred Stock, all shares of Preferred Stock being converted by any holder thereof shall be aggregated for the purpose of determining the number of shares of Common Stock to which such holder shall be entitled, and no fractional share of Common Stock shall be issued. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the Mandatory Conversion Date, as reasonably determined by the Board of Directors in good faith.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Subsection 6(e), the following definitions shall apply:

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

(B) "Original Issue Date" shall mean, with respect to any series of Preferred Stock, the first date on which a share of Preferred Stock of such series was issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock (other than Common Stock) or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 6(e)(iii), deemed to be issued) by the Company after the Original Issue Date, other than:

(I) shares of Common Stock issued or issuable to the holders of Preferred Stock upon conversion of shares of Preferred Stock;

(II) up to 4,368,051 shares of Common Stock reserved for issuance to employees, directors and consultants of the Company upon exercise of options granted or to be granted pursuant to the SOP;

(III) up to 265,465 shares of Common Stock reserved for issuance to UPMC/Diversified Services and UPMC/St. Margaret's upon exercise of the UPMC/Diversified Services and UPMC/St. Margaret's warrants (the "UPMC Warrants");

(IV) shares of Common Stock issued or issuable as a dividend or distribution on any class or series of Preferred Stock or shares of Preferred Stock issued or issuable as a dividend pursuant to Section D.2 hereof;

(V) shares of Common Stock issued or issuable in connection with the acquisition of the assets or the outstanding capital stock of another corporation or other entity by the Company or the merger of another corporation or other entity into the Company; provided that pursuant to such acquisition the holders of capital stock of the Company immediately prior to such acquisition continue to hold in excess of fifty percent (50%) in voting power of the capital stock of the Company; provided, further, that such acquisition is approved by a majority of the whole Board of Directors (including the Series C Directors);

(VI) shares of Common Stock issued or issuable in connection with commercial lending or lease transactions, strategic partnership arrangements or real estate leasing transactions approved by a majority of the whole Board of Directors (including the Series C Directors); provided that such transactions or arrangements are not intended to serve as equity financings for the Company;

(VII) de minimis issuances of warrants exercisable for shares of Common Stock approved by a majority of the whole Board of Directors (including the Series C Directors); and

(VIII) shares of Common Stock issued or issuable in connection with re-issuances to employees of shares that were acquired by the Company in repurchase transactions, which issuance is approved by a majority of the whole Board of Directors (including the Series C Directors).

(ii) No Adjustment of Conversion Price. Except as set forth in Subsection D.6(e)(vi), no adjustment in the number of shares of Common Stock into which any series of Preferred Stock is convertible shall be made, by adjustment to the applicable Conversion Price for such series in respect of the issuance of Additional Shares of Common Stock (a) unless the consideration per share for an Additional Share of Common Stock (determined pursuant to Subsection D.6(c)(v)) issued or deemed to be issued by the Company is less than the applicable Conversion Price for such series in effect on the date of, and immediately prior to, the issue of such Additional Share of Common Stock or (b) if prior to such issuance or within twenty (20) days thereafter the Company receives notice that no such adjustment in the applicable Conversion Price for such series shall be made from (I) in the case of potential adjustments to the Series C Conversion Price, the holders of 70% in voting power of the outstanding shares of Series C Preferred Stock, (II) in the case of potential adjustments to the Series B Conversion Price, the holders of a majority in voting power of the outstanding shares of Series B Preferred Stock, and (III) in the case of potential adjustments to the Series A Conversion Price, the holders of a majority in voting power of the outstanding shares of Series A Preferred Stock.

(iii) Issue of Securities; Deemed Issue of Additional Shares of Common Stock.

(A) Options and Convertible Securities. In the event the Company at any time or from time to time after the Original Issue Date for any series of Preferred Stock shall issue any Options (excluding for all purposes of this Subsection D.6(e)(iii)(A) Options excluded from the definition of Additional Shares of Common Stock in Subsection D.6(e)(i)(D)(II)) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, and the applicable Conversion Price of such series of Preferred Stock shall be adjusted accordingly, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(I) no further adjustment in the applicable Conversion Price of any such series of Preferred Stock shall be made upon the exercise of such Options or conversion or exchange of the Convertible Securities;

(II) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Company, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the applicable Conversion Price of any such series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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

(1) In the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Company upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange; and

(2) in the case of Options for Convertible Securities only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Company for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Company (determined pursuant to Subsection 6(e)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(IV) no readjustment pursuant to clause (1) or (2) above shall have the effect of increasing the applicable Conversion Price of any such series of Preferred Stock to an amount which exceeds the lower of (i) the applicable Conversion Price of any such series of Preferred Stock on the original adjustment date, or (ii) the applicable Conversion Price of any such series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(V) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the applicable Conversion Price of any such series of Preferred Stock which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the applicable Conversion Price of any such series of Preferred Stock shall be adjusted pursuant to this Subsection 6(e)(iii) as of the actual date of their issuance.

(B) Stock Dividends, Stock Distributions and Subdivisions. In the event the Company at any time or from time to time after the Original Issue Date for any series of Preferred Stock shall declare or pay any dividend or make any other distribution on the Common Stock payable in

Common Stock or effect a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Common Stock), then and in any such event, Additional Shares of Common Stock shall be deemed to have been issued with respect to such series of Preferred Stock:

(A) in the case of any such dividend or distribution, immediately after the close of business on the record date for the determination of holders of any class of securities entitled to receive such dividend or distribution, or

(B) in the case of any such subdivision, at the close of business on the date immediately prior to the date upon which such corporate action becomes effective.

If such record date shall have been fixed and no part of such dividend or distribution shall have been paid on the date fixed therefor, the adjustment previously made in the applicable Conversion Price of such series of Preferred Stock which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the applicable Conversion Price of such series of Preferred Stock shall be adjusted pursuant to this Subsection 6(e)(iii) as of the time of actual payment of such dividend or distribution.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. If and whenever the Company shall issue or sell, or is, in accordance with Sections D.6(e)(i) through (vi), deemed to have issued or sold, any Additional Shares of Common Stock for a consideration per share less than the applicable Conversion Price for the Preferred Stock in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the applicable Conversion Price for the Preferred Stock shall be reduced (unless such reduction has been waived in writing by the holders of a majority in voting power (or, in the case of Series C Preferred Stock, by the holders of 70% in voting power) of the outstanding shares of the series of Preferred Stock to which such waiver applies) to a price (calculated to the nearest hundredth of a cent) determined in accordance with the following formula:

$$NCP = \frac{(P1)(Q1) + (P2)(Q2)}{Q1 + Q2}$$

Where:

NCP	=	New Conversion Price
P1	=	Conversion Price in effect immediately prior to the issuance of Additional Shares of Common Stock
Q1	=	Number of shares of Common Stock outstanding or issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities, as the case may be, immediately prior to such issuance of Additional Shares of Common Stock
P2	=	Weighted average price per share received by the Company upon such issue
Q2	=	Number of Additional Shares of Common Stock issued in the subject transaction

Notwithstanding the foregoing, with respect to any adjustment in Conversion Prices hereunder, in the event that the percentage decrease in the Series A Conversion Price or Series B Conversion Price is greater than the percentage decrease in the Series C Conversion Price, then the Series A Conversion Price

or the Series B Conversion Price, as applicable, shall instead be adjusted by an amount equal to the percentage decrease in the Series C Conversion Price.

(v) Determination of Consideration. For purposes of this Subsection D.6(e), the consideration received by the Company for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property. Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate amounts of cash received by the Company excluding amounts paid or payable for accrued interest or accrued dividends;

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

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

(B) Options and Convertible Securities. The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 6(e)(iii)(A), relating to Options and Convertible Securities, shall be determined by dividing (x) the total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by (y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Adjustment for Dividends, Distributions, Subdivisions, Combinations or Consolidations of Common Stock.

(A) Stock Dividends, Distributions or Subdivisions. In the event the Company shall be deemed to issue Additional Shares of Common Stock pursuant to Subsection D.6(c)(iii)(B) in a stock dividend, stock distribution or subdivision, the applicable Conversion Price of each series of Preferred Stock in effect immediately before such deemed issuance shall, concurrently with the effectiveness of such deemed issuance, be proportionately decreased.

(B) Combinations or Consolidations. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the applicable Conversion Price of each series of Preferred Stock in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(f) Adjustments for Certain Dividends and Distributions. In the event that at any time or from time to time after the Original Issue Date for any series of Preferred Stock the Company shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company other than shares of Common Stock or securities the issuance of which are deemed to be issuances of Common Stock under Subsection D.6(e)(iii), then and in each such event provision shall be made so that the holders of Preferred Stock of such series shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Company that they would have received had their Preferred Stock been converted into Common Stock immediately prior to such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

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

(h) Adjustment for Merger, Consolidation or Sale of Assets. In the event that at any time or from time to time after the Original Issue Date for any series of Preferred Stock the Company shall merge or consolidate with or into another entity or sell all or substantially all of its assets, and such consolidation, merger or sale is not treated as a liquidation, each share of such series of Preferred Stock shall thereafter be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Company deliverable upon conversion of such series of Preferred Stock would have been entitled to receive upon such consolidation, merger or sale; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions set forth in this Section 6 with respect to the rights and interest thereafter of the holders of shares of such series of Preferred Stock, to the end that the provisions set forth in this Section 6 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other securities or property thereafter deliverable upon the conversion of such series of Preferred Stock.

(i) No Impairment. The Company shall not, by amendment of this Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but shall at all times in good faith assist in the carrying out of all the provisions of this Section 6 and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of Preferred Stock under this Section 6 against impairment.

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price of any series of Preferred Stock pursuant to this Section 6, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price for each series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of each share of Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the Company of a record of the holders of any class or series of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, the Company shall mail to each holder of Preferred Stock at least ten (10) days prior to such record date a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution.

(l) Capital Stock Reserved. The Company shall at all times reserve and keep available, free from pre-emptive rights, out of its authorized but unissued shares of (i) Common Stock, solely for the purpose of effecting the conversion of 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 Preferred Stock and (ii) Preferred Stock, solely for the purpose of effecting the payment of the dividend pursuant to Section D.2 hereof, such number of its shares of Preferred Stock as shall from time to time be sufficient to effect the payment of such dividend; and if at any time the number of authorized but unissued shares of Common Stock or Preferred Stock, as applicable, shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock or the payment of the dividend, as applicable, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Company 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 and Preferred Stock, as applicable, 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 the Certificate of Incorporation.

(m) Certain Taxes. The Company shall pay any issue or transfer taxes payable in connection with the conversion of Preferred Stock, provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer to a name other than that of the holder of the Preferred Stock.

(n) Closing of Books. The Company shall at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion or transfer of such Preferred Stock or Common Stock.

(o) Validity of Shares. The Company agrees that it will from time to time take all such actions as may be required to assure that all shares of Common Stock which may be issued upon conversion of any Preferred Stock will, upon issuance, be legally and validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof.

7. No Reissuance of Preferred Stock.

No share or shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

8. Redemption of Shares of Series B and C Stock.

(a) Holders' Right to Redeem. Upon receipt by the Company, at any time after the sixth anniversary of the first date on which shares of Series C Preferred Stock are first issued, of written notice (the "Election Notice") requesting redemption of the Series B and C Stock from the holders of at least 60% of the shares of Series B and C Stock then outstanding, the Company shall redeem all shares of Series B and C Stock then outstanding at a price per share equal to the Series B Preferred Stock Redemption Price (as hereinafter defined), in the case of Series B Preferred Stock, and equal to the Series C Preferred Stock Redemption Price (as hereinafter defined), in the case of Series C Preferred Stock, such redemption to occur no later than sixty (60) days after receipt of the Election Notice (the "Redemption Date").

(b) Redemption Price and Payment. For the purposes of this Section D.8(b), the "Series B Preferred Stock Redemption Price" shall be the greater of (i) the Original Issue Price of the Series B Preferred Stock plus, in the case of each share, all accrued but unpaid dividends, computed to the Redemption Date, or (ii) the Fair Market Value of the Series B Preferred Stock computed as of the Redemption Date, and the "Series C Preferred Stock Redemption Price" shall be the greater of (i) the Original Issue Price of the Series C Preferred Stock plus, in the case of each share, all accrued but unpaid dividends, computed to the Redemption Date, or (ii) the Fair Market Value of the Series C Preferred Stock computed as of the Redemption Date. For the purposes hereof, "Fair Market Value" shall be determined in good faith by the Board of Directors with the approval of the holders of 60% of the shares of Series B and C Stock then outstanding, voting together as a single class; provided that, if such determination and approval cannot be obtained within fifteen (15) days following the Redemption Date then the Fair Market Value shall be determined by an independent valuation ("Independent Valuation") assuming the outright sale of 100% of the outstanding securities of the Company to an arm's-length buyer. The Independent Valuation, if necessary, will be performed by an investment bank or appraiser of national reputation selected by the Company and reasonably acceptable to the holders of 60% of the shares of Series B and C Stock then outstanding, voting together as a single class. The Company shall pay the cost of the Independent Valuation. The Independent Valuation shall not contain any reductions in the valuation of the Series B or C Stock attributable to minority interest or lack of liquidity.

(c) Redemption Mechanics. Within ten (10) days of the Company's receipt of the Election Notice, written notice (the "Redemption Notice") shall be given by the Company by mail, postage prepaid, or by international courier to non-U.S. residents, to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of Series B and C Stock, notifying such holder of the redemption and specifying the number of shares being redeemed, the redemption price, the date of redemption and the place where the redemption price shall be payable. The Redemption Notice shall be addressed to each holder at the address shown by the records of the Company. From and after the close of business on such date of redemption, unless there shall have been a default in the payment of the redemption price, all rights of holders of shares of Series B and C Stock (except the right to receive the redemption price) shall cease with respect to such shares so redeemed, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. The shares of Series B and C Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. If the funds of the Company legally available for the payment of the Series B and C Stock Redemption Price or Series C Preferred Stock Redemption Price on any date when payment is due are insufficient to pay the full Series B Preferred Stock Redemption Price or Series C Preferred Stock Redemption Price, the holders of shares of Series B and C Stock who are owed payment shall share ratably in any funds legally available for payment according to the respective amounts which would be payable to them if payment on such date were made in full. At any time when additional funds of the Company are legally available for payment of the Series B Preferred Stock Redemption Price or Series C Preferred Stock Redemption Price such

funds will be used to pay the balance of the Series B Preferred Stock Redemption Price or Series C Preferred Stock Redemption Price then due, or such portion thereof for which funds are then legally available, on the basis set forth above.

(d) Redemption Default. If the Company fails to make the full Series B Preferred Stock Redemption Price payment or Series C Preferred Stock Redemption Price payment as provided herein, the holders of 60% of the shares of Series B and C Stock then outstanding, voting together as a single class, shall have the right to require the Company to undertake a Change in Control transaction, which, if requested by such holders of Series B and C Stock, may be effected through an auction of the Company conducted in a commercially reasonable manner in consultation with the Company's Chief Executive Officer) in order to attain the highest price per share for holders of the Company's capital stock.

(e) Redeemed or Otherwise Acquired Shares To Be Retired. Any shares of Series B or C Stock redeemed pursuant to this Section D.8 or otherwise acquired by the Company in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; and the Company may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series B and C Stock.

(f) Termination of Redemption Right. The right of redemption under this Section D.8 shall terminate on the closing of a Qualified Public Offering or a Change In Control.

E. Election of Directors.

1. Directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Each director shall hold office either until the expiration of the term for which elected or appointed and until a successor has been elected and qualified, or until such director's death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

2. No person entitled to vote at an election for directors may cumulate votes to which such person is entitled.

3. The directors of the Company need not be elected by written ballot unless the Bylaws so provide. The number of directors constituting the Board shall be initially set at seven (7) and shall only be increased or decreased in accordance with the Bylaws and the provisions of this Certificate of Incorporation.

4. The holders of 70% of the outstanding shares of Series C Preferred Stock, voting as a separate class, shall be entitled to elect three (3) directors of the Company, one of whom shall be appointed by Salix Ventures II, L.P. ("Salix"), or its successor or assignee, one of whom shall be appointed by Pacific Venture Group II, L.P., or its successor or assignee, and one of whom shall be an industry expert proposed by Salix and approved by the Company's Board of Directors (the "Outside Director"). The holders of a majority of the outstanding shares of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director of the Company, who shall be appointed by Draper Triangle Ventures, L.P., or its successor or assignee. The holders of a majority of the outstanding shares of Common Stock and Series A Preferred Stock, voting together as a single class, shall be entitled to elect two (2) directors of the Company. The holders of a majority of the outstanding shares of Common Stock, voting as a separate class, shall be entitled to elect one (1) director (the "Common Director"); provided, however, that the Common Director must be the chief executive officer of the Company.

At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of 70% of the shares of Series C Preferred Stock, voting as a separate class, and the holders of a majority of the shares of Series B Preferred Stock, voting as a separate class, Common Stock and Series A Preferred Stock (on an as converted into Common basis), voting as a single class, or Common Stock, voting as a separate class, as the case may be, then outstanding shall constitute a quorum of the Series C Preferred Stock, voting as a separate class, Series B Preferred Stock, voting as a separate class, Common Stock and Series A Preferred Stock, voting as a single class, or Common Stock, voting as a separate class, as the case may be, for the election of directors to be elected by such holders, respectively. A vacancy in a directorship elected by holders of 70% of the Series C Preferred Stock, voting as a separate class, shall be filled only by vote or written consent of the holders of the Series C Preferred Stock. A vacancy in a directorship elected by holders of a majority of the Series B Preferred Stock, voting as a separate class, shall be filled only by vote or written consent of the holders of the Series B Preferred Stock. A vacancy in a directorship elected by holders of Series A Preferred Stock and Common Stock, voting as a single class, shall be filled only by vote or written consent of the holders of a majority of the Series A Preferred Stock and Common Stock, voting as a single class. A vacancy in a directorship elected by the holders of Common Stock, voting as a separate class, shall be filled only by vote or written consent of the holders of a majority of the Common Stock voting as separate class in accordance with this Section E.4.

ARTICLE FIVE

The name and mailing address of the sole incorporator are as follows:

Carol A. Soltes
Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219

ARTICLE SIX

The Company is to have perpetual existence.

ARTICLE SEVEN

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

ARTICLE EIGHT

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Company may provide. The books of the Company may be kept 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 Company. Election of directors need not be by written ballot unless the bylaws of the Company so provide.

ARTICLE NINE

To the fullest extent permitted by the DGCL as the same exists or may hereafter be amended, a director of the Company shall not be liable to the Company or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE NINE shall not

adversely affect any right or protection of a director of the Company existing at the time of such repeal or modification.

ARTICLE TEN

The Company shall indemnify its officers, directors, employees and agents to the fullest extent permitted by the DGCL.

ARTICLE ELEVEN

The Company expressly elects not to be governed by Section 203 of the DGCL.

ARTICLE TWELVE

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

I, Carol A. Soltes, being the incorporator herein before named, for the purpose of forming a corporation pursuant to the DGCL, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 2nd day of June, 2004.

s/ Carol A. Soltes

Carol A. Soltes, Sole Incorporator