

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
AGEIA TECHNOLOGIES, INC.

Ageia Technologies, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), certifies that:

A. The name of the Corporation is Ageia Technologies, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 5, 2002.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation's Amended and Restated Certificate of Incorporation.

C. The text of the Amended and Restated Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Ageia Technologies, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Manju Hegde, a duly authorized officer of the Corporation, on August 3, 2007.

/s/ Manju Hegde
Manju Hegde, Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of the Corporation is Ageia Technologies, Inc.

ARTICLE II

The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE III

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

ARTICLE IV

1. **Number of Shares.** The total number of shares of stock that the Corporation shall have authority to issue is 281,949,967, consisting of 120,000,000 shares of Common Stock, \$0.001 par value per share, and 161,949,967 shares of Preferred Stock, \$0.001 par value per share. The first series of Preferred Stock shall be designated "**Series A Preferred Stock**" and shall consist of 19,367,512 shares. The second series of Preferred Stock shall be designated "**Series A1 Preferred Stock**" (together with the Series A Preferred Stock, the "**Series AA Preferred Stock**") and shall consist of 19,367,512 shares. The third series of Preferred Stock shall be designated "**Series B Preferred Stock**" and shall consist of 22,055,003 shares. The fourth series of Preferred Stock shall be designated "**Series B1 Preferred Stock**" (together with the Series B Preferred Stock, the "**Series BB Preferred Stock**") and shall consist of 22,055,003 shares. The fifth series of Preferred Stock shall be designated "**Series C Preferred Stock**" and shall consist of 35,454,108 shares. The sixth series of Preferred Stock shall be designated "**Series C1 Preferred Stock**" (together with the Series C Preferred Stock, the "**Series CC Preferred Stock**") and shall consist of 43,650,829 shares.

2. **Voting.**

2A. **General.** Except as may be otherwise provided in these terms of the Preferred Stock or by law, the Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on an as-converted to Common Stock basis on all actions to be taken by the stockholders of the Corporation, including, but not limited to actions amending the Amended and Restated Certificate of Incorporation of the Corporation to increase the number of authorized shares of Common Stock. Each share of Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which such share of Preferred Stock is then convertible.

2B. Board Size. The Corporation shall not, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, increase the maximum number of directors constituting the Board of Directors to a number in excess of seven (7).

2C. Board Seats. The number of authorized members of the Corporation's Board of Directors shall be seven (7). The holders of Common Stock, voting separately as a class, shall be entitled to elect two (2) directors of the Corporation. The holders of shares of Series AA Preferred Stock, voting separately as a class, shall be entitled to elect three (3) directors of the Corporation. The holders of shares of Series BB Preferred Stock and Series CC Preferred Stock, voting together as a single class, shall be entitled to elect one (1) director of the Corporation. Any remaining directors shall be elected by the holders of a majority of the Common Stock and Preferred Stock, voting together as a single class on an as-converted to Common Stock basis. Any director elected by the holders of a particular class/series of Common Stock or Preferred Stock may be removed during such director's term of office, either for or without cause, by and only by the affirmative vote of the holders of at least a majority of the outstanding shares of such class/series of Common Stock or Preferred Stock given at a meeting of stockholders duly called or by an action by written consent for that purpose.

3. Dividends. The holders of outstanding shares of Preferred Stock shall be entitled to receive out of funds legally available therefor dividends equal to five percent (5%) of Issuance Price for such series when, as and if declared by the Board of Directors. The "**Issuance Price**" shall be \$0.50 for the Series AA Preferred Stock, \$0.87 for the Series BB Preferred Stock, and \$1.22 for the Series CC Preferred Stock (as adjusted in each case for any future stock splits, combinations, recapitalizations, and the like). Holders of the Series BB Preferred Stock and the Series CC Preferred Stock will be entitled to receive on a pari passu basis, dividends prior and in preference to dividends payable to the holders of any other stock of the Corporation. Holders of the Series AA Preferred Stock will be entitled to receive dividends prior and in preference to dividends payable to the holders of the Common Stock of the Corporation. After the dividend preferences of the Series CC Preferred Stock, Series BB Preferred Stock and Series AA Preferred Stock in the preceding two sentences have been satisfied, the holders of outstanding shares of Preferred Stock shall be entitled to participate in the receipt of dividends with the holders of outstanding shares of Common Stock pro rata according to the number of shares of Common Stock held by such holders, where, for this purpose, holders of shares of Preferred Stock will be deemed to hold (in lieu of their Preferred Stock) the greatest whole number of shares of Common Stock then issuable upon conversion in full of such shares of Preferred Stock pursuant to paragraph 6. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and the holders of the Preferred Stock shall have no right to such dividends except as set forth above.

4. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Preferred Stock shall first be entitled, before any distribution or payment is made upon any stock ranking on liquidation junior to the Preferred Stock, to be paid an amount equal to the Issuance Price for such share, plus an amount equal to all dividends declared but unpaid thereon, if any (for each share of Preferred Stock, the

applicable "**Liquidation Preference Payment**," and, in aggregate for all shares of Preferred Stock, the "**Liquidation Preference Payments**." If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Preferred Stock shall be insufficient to permit payment in full to the holders of Preferred Stock of the Liquidation Preference Payments, then the entire assets of the Corporation to be so distributed shall be distributed (i) first, until such time as the applicable Liquidation Preference Payment due on the Series CC Preferred Stock and Series BB Preferred Stock have been paid, to the holders of Series CC Preferred Stock and Series BB Preferred Stock on a pari passu basis, based on the Liquidation Preference Payments due to them on account of their holdings of Series BB Preferred Stock and Series CC Preferred Stock, and, after paying the total Liquidation Preference Payment due to all holders of Series CC Preferred Stock and Series BB Preferred Stock by virtue of their ownership of shares of Series CC Preferred Stock and Series BB Preferred Stock, (ii) second, to the extent assets remain available for distribution, to the holders of Series AA Preferred Stock on a pro-rata basis, based on the number of shares of Series AA Preferred Stock held by them. Upon any such liquidation, dissolution or winding up of the Corporation, immediately after the holders of Preferred Stock shall have been paid in full the Liquidation Preference Payments, the remaining net assets of the Corporation available for distribution shall be distributed ratably among the holders of Preferred Stock and Common Stock (with each share of Preferred Stock being deemed, for such purpose, to be equal to the number of shares of Common Stock (including fractions of a share) into which such share of Preferred Stock is convertible immediately prior to the close of business on the business day fixed for such distribution). Notwithstanding the foregoing, the aggregate distributions (including the Liquidation Preference Payment and any other distributions) made pursuant to this paragraph 4 with respect to any share of Preferred Stock shall not exceed an amount equal to \$2.00, \$3.48 and \$4.88 per share of Series AA Preferred Stock, Series BB Preferred Stock and Series CC Preferred Stock, respectively (as adjusted in each case for any future stock splits, combinations, recapitalizations, and the like with respect to such shares). Unless waived by the holders of a majority of the Preferred Stock outstanding (calculated on an as-converted to Common Stock basis), written notice of such liquidation, dissolution or winding up, stating a payment date, an estimate of the amount of the Liquidation Preference Payments and the place where said Liquidation Preference Payments shall be payable, shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by telecopier or telex, not less than twenty (20) 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 Corporation. Each of the following shall each be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this paragraph 4: (i) any consolidation or merger of the Corporation into or with any other entity or entities, if the stockholders of the Corporation immediately prior to such issuance do not collectively hold at least fifty percent (50%) of the combined voting power of the Corporation's outstanding capital stock after such issuance on account of equity interests held by them prior to the issuance, (ii) any sale, lease, abandonment, transfer or other disposition by the Corporation of all or substantially all its assets, and (iii) any issuance by the Corporation, in other than a public offering or venture capital or similar financing, of shares of its capital stock, if the stockholders of the Corporation immediately prior to such issuance do not collectively hold at least fifty percent (50%) of the combined voting power of the Corporation's outstanding capital stock after such issuance on account of equity interests held by them prior to the issuance. For purposes hereof, the Common Stock shall rank on liquidation junior to the Series AA Preferred Stock, the

Series BB Preferred Stock and the Series CC Preferred Stock, the Series AA Preferred Stock shall rank on liquidation junior to the Series BB Preferred Stock and the Series CC Preferred Stock and the Series BB Preferred Stock and Series CC Preferred Stock shall have pari passu rights with respect to liquidation.

5. Restrictions. At any time when shares of Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Amended and Restated Certificate of Incorporation, and in addition to any other vote required by law or the Amended and Restated Certificate of Incorporation, without the approval of the holders of at least a majority of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, the Corporation will not:

5A. Amend, alter or repeal its Amended and Restated Certificate of Incorporation or Bylaws (by amendment, merger, consolidation or otherwise) if the effect would be detrimental or adverse in any manner with respect to the rights of the Preferred Stock; provided, however, that any such amendment that adversely affects the rights, privileges or preferences of the Series BB Preferred Stock, including, without limitation, any increase in the authorized number of shares of Series BB Preferred Stock, shall also require the approval of the holders of 75% of the Series BB Preferred Stock then outstanding and any such amendment that adversely affects the rights, privileges or preferences of the Series CC Preferred Stock, including, without limitation, any increase in the authorized number of shares of Series CC Preferred Stock, shall also require the approval of the holders of a majority of the Series CC Preferred Stock then outstanding;

5B. Create or authorize the creation of any additional class or series of shares of stock (or any security convertible or exercisable, directly or indirectly, into any class or series of shares of stock) unless the same ranks junior to any outstanding series of Preferred Stock as to all rights, preferences and privileges, or increase the authorized number of shares of Preferred Stock, whether any such creation, authorization or increase shall be by means of amendment to the Amended and Restated Certificate of Incorporation or by merger, consolidation or otherwise;

5C. Become obligated to pay in excess of \$100,000 through the issuance of any debt other than in the usual course of business under a working-capital line of credit;

5D. Redeem or otherwise acquire any shares of Preferred Stock except as expressly authorized in paragraph 7 hereof;

5E. Purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of stock other than the Preferred Stock as expressly authorized by this Amended and Restated Certificate of Incorporation, except for dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and except for the purchase of shares of Common Stock from former employees of the Corporation who acquired such shares directly from the Corporation, if each such purchase is made in connection with the termination of employment of such former employee and the purchase price does not exceed the original issue price paid by such former employee to the Corporation for such shares;

5F. Sell, lease, abandon, transfer or otherwise dispose of any material assets or a material portion of the Corporation's assets valued in excess of \$500,000;

5G. Change the authorized number of members of the Corporation's Board of Directors from seven (7);

5H. Issue or become obligated to issue more than, in aggregate, 11,260,000 shares of Common Stock to the Corporation's employees, consultants or directors pursuant to stock option, stock grant, stock purchase or similar plans or arrangements, unless approved by the Board of Directors, including the directors elected solely by the holders of Series AA Preferred Stock, voting as a single class, and the holders of Series BB Preferred Stock and Series CC Preferred Stock, voting together as a single class;

5I. Issue or become obligated to issue any shares of its Series CC Preferred Stock, except pursuant to the exercise of securities outstanding as of the date hereof, unless such issuance is approved by the Board of Directors, including at least three of the directors elected solely by the holders of Series AA Preferred Stock, voting as a single class, and the holders of Series BB Preferred Stock and Series CC Preferred Stock, voting together as a single class;

5J. Acquire, in whole or in part, the assets or equity of any other entity, if the purchase price paid for such assets or equity exceeds \$500,000;

5K. Consent to any event which would be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of paragraph 4 above; or

5L. Effect a recapitalization or reclassification of the Corporation's capital stock.

6. Conversions. The holders of shares of Preferred Stock shall have the following conversion rights:

6A. Right to Convert. Subject to the terms and conditions of paragraph 6, the holder of any share or shares of Preferred Stock shall have the right, at its option at any time, to convert any such shares of Preferred Stock into such number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Preferred Stock so to be converted by the applicable Issuance Price and (ii) dividing the result by a conversion price initially equal to the applicable Issuance Price or, in case an adjustment of such price has taken place pursuant to the further provisions of this paragraph 6, then by the conversion price as last adjusted and in effect at the date such share or shares of Preferred Stock are surrendered for conversion (such price, or such price as last adjusted, being referred to as the "**Conversion Price**" for such series of Preferred Stock and the number of shares into which each share of any series of Preferred Stock may convert being referred to as the "**Conversion Rate**" for such series of Preferred Stock). Such rights of conversion shall be exercised by the holder thereof by giving written notice that the holder elects to convert a stated number of shares of Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Preferred Stock) at any time during its usual business hours on the date set forth

in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. Notwithstanding the forgoing, shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock without first foregoing participation in the distribution, or series of distributions, on such shares of Preferred Stock made pursuant to Section 4 hereof.

6B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the written notice referred to in subparagraph 6A and surrender of the certificate or certificates for the share or shares of Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the applicable Conversion Price shall be determined as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

6C. Fractional Shares; Dividends; Partial Conversion. No fractional shares shall be issued upon conversion of Preferred Stock into Common Stock. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends declared and unpaid on the shares of Preferred Stock surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subparagraph 6B. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered pursuant to subparagraph 6A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this subparagraph 6C, be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation.

6D. Adjustment of Price Upon Issuance of Common Stock. Except as provided in subparagraph 6E, if and whenever after the date hereof the Corporation shall issue or sell, or is, in accordance with subparagraphs 6D(1) through 6D(7), deemed to have issued or sold (such shares will be referred to as shares that are "**Deemed Issued**"), any shares of Common Stock for a consideration per share (the "**Consideration**") less than the Conversion Price for a given series of Preferred Stock in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Conversion Price of such series shall be reduced to the price (calculated to the nearest cent) determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock actually outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price of such series and (b) the consideration, if any, received by the

Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock actually outstanding immediately prior to such issue or sale plus the number of shares of Common Stock issued or Deemed Issued in such issuance or sale (this formula hereinafter referred to as the **"Conversion Price Adjustment Calculation"**). Notwithstanding the foregoing, if the Consideration is less than the then effective Conversion Price for the Series BB Preferred Stock, then the Conversion Price for the Series BB Preferred Stock shall first be reduced prior to performing the Conversion Price Adjustment Calculation to the greater of (x) the Consideration and (y) \$0.58 (as adjusted in each case for any future stock splits, combinations, recapitalizations, and the like). In addition, notwithstanding the foregoing, if the Consideration is less than \$0.87 per share, then the Conversion Price for the Series CC Preferred Stock shall be reduced to the lesser of (xx) \$0.87 and (yy) the Conversion Price calculated pursuant to the Conversion Price Adjustment Calculation (as adjusted in each case for any future stock splits, combinations, recapitalizations, and the like). Notwithstanding the foregoing, the Conversion Price for a given series of Preferred Stock shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of this Paragraph 6D, all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

For purposes of this subparagraph 6D, the following subparagraphs 6D(1) to 6D(7) shall also be applicable:

6D(1) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock directly or indirectly (such warrants, rights or options being called **"Options"** and such convertible or exchangeable stock or securities being called **"Convertible Securities"**) whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock then issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options directly or indirectly) shall be less than the Conversion Price for any series of Preferred Stock in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting

of such Options and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph 6D(3), no adjustment of the Conversion Price for a given series of Preferred Stock shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities. Notwithstanding the foregoing, the calculations set forth in this paragraph shall not include the effect of adjustments by reason of provisions designed to protect against dilution that are not yet required to be made.

6D(2) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock then issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price for any series of Preferred Stock in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subparagraph 6D(3), no adjustment of the Conversion Price for such series of Preferred Stock shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price for such series of Preferred Stock have been or are to be made pursuant to other provisions of this subparagraph 6D, no further adjustment of the such Conversion Price shall be made by reason of such issue or sale. Notwithstanding the foregoing, the calculations set forth in this paragraph shall not include the effect of adjustments by reason of provisions designed to protect against dilution that are not yet required to be made.

6D(3) Change in Option Price or Conversion Rate. If (i) the purchase price provided for in any Option referred to in subparagraph 6D(1), (ii) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph 6D(1) or 6D(2), or (iii) the rate at which Convertible Securities referred to in subparagraph 6D(1) or 6D(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price for a given series of Preferred Stock in effect at the time of such event shall forthwith be readjusted to the Conversion Price for such series of Preferred Stock which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the termination of any such Option or any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder for such series of Preferred Stock shall forthwith be increased to the

Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued; provided, however, that in no event will the Conversion Price be higher than if Option or Convertible Securities had not been issued.

6D(4) Stock Dividends. Except in the case of dividends or distributions pursuant to which an adjustment in the Conversion Price for a series of Preferred Stock is made under paragraph 6F or 6G hereof, if the Corporation declares a dividend or makes any other distribution upon any stock of the Corporation payable in Common Stock, Options or Convertible Securities, then any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

6D(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

6D(6) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

6D(7) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this subparagraph 6D.

6E. Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of any applicable Conversion Price in the case of (i) the issuance from and after the date hereof of Common Stock to directors, officers, employees or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation or their retention as

consultants by the Corporation, pursuant to any stock options approved by the Board of Directors of the Corporation including approval of the director elected solely by the holders of the Series BB Preferred Stock and the Series CC Preferred Stock, (ii) the issuance or deemed issuance of shares of Common Stock, directly or indirectly, upon exercise and/or conversion of Options and Convertible Securities outstanding as of the date hereof, (iii) the issuance or deemed issuance of shares of Common Stock upon conversion of the Preferred Stock, and (iv) any other issuance of equity securities approved by the Board of Directors of the Corporation, including approval of the director elected solely by the holders of the Series BB Preferred Stock and the Series CC Preferred Stock.

6F. Subdivision or Combination of Common Stock. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price for any series of Preferred Stock in effect immediately prior to such subdivision 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 for any series of Preferred Stock in effect immediately prior to such combination shall be proportionately increased. In the case of any such subdivision, no further adjustment shall be made pursuant to subparagraph 6D(4) by reason thereof.

6G. Reorganization or Reclassification. If any capital reorganization or reclassification of the capital stock of the 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 Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of 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 such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

6H. Notice of Adjustment. Upon any adjustment of the applicable Conversion Price, then and in each such case the Corporation shall give written notice thereof, by delivery in person, certified or registered mail, return receipt requested, addressed to each holder of shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the applicable Conversion Price resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

6I. Other Notices. In case at any time:

6I(1) the Corporation shall declare any dividend upon its Common Stock or Preferred Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

6I(2) the Corporation shall offer for subscription pro rata to the holders of its Common Stock or Preferred Stock any additional shares of stock of any class or other rights;

6I(3) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into another entity or entities, or a sale, lease, abandonment, transfer or other disposition of all or substantially all its assets; or

6I(4) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation or the fixing of a date for payment of an amount distributable in connection with a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of said cases, unless waived by the holders of a majority of the shares of Preferred Stock then outstanding, the Corporation shall give, by delivery in person, certified or registered mail, return receipt requested, addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least twenty (20) days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up and (b) in the case of any such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, at least twenty (20) days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock or Preferred Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock or Preferred Stock shall be entitled to exchange their Common Stock or Preferred Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, disposition, dissolution, liquidation or winding up, as the case may be.

6J. Stock to be Reserved. The Corporation will 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, and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the applicable Conversion Price in effect at the time. 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 for any series of Preferred Stock 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 Amended and Restated Certificate of Incorporation.

6K. No Reissuance of Preferred Stock. Shares of Preferred Stock that are converted into shares of Common Stock as provided herein shall not be reissued.

6L. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided 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 certificate in a name other than that of the holder of the Preferred Stock which is being converted.

6M. Closing of Books. The Corporation will 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 of such Preferred Stock, except as may otherwise be required to comply with applicable securities laws or the provisions of agreements entered into by the holder thereof.

6N. Mandatory Conversion. If at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which (i) the gross proceeds to the Corporation for such shares is at least \$25,000,000 and (ii) the price paid by the public for such shares is at least \$3.48 per share (appropriately adjusted to reflect the occurrence of any event described in subparagraph 6F), then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering, all outstanding shares of Preferred Stock shall automatically convert to shares of Common Stock on the basis set forth in this paragraph 6. Holders of shares of Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to subparagraph 6C. Until such time as a holder of shares of Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

6O. Special Mandatory Conversion.

6O(1) At 5:01 p.m. California time on September 19, 2007 ("**Mandatory Conversion Date**"), all outstanding shares of Series A Preferred Stock shall be automatically converted into shares of Common Stock at the then effective Conversion Rate for such shares in accordance with Section 6O(4).

6O(2) At 5:01 p.m. California time on the Mandatory Conversion Date, all outstanding shares of Series B Preferred Stock shall be automatically converted into shares of Common Stock at the then effective Conversion Rate for such shares in accordance with Section 6O(4).

6O(3) At 5:01 p.m. California time on the Mandatory Conversion Date, all outstanding shares of Series C Preferred Stock shall be automatically converted into shares of Common Stock at the then effective Conversion Rate for such shares in accordance with Section 6O(4).

6O(4) The holder of any shares of Preferred Stock converted pursuant to this paragraph 6O shall deliver to the Corporation during regular business hours or at the office of any transfer agent of the Corporation for the Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank to the Corporation. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled. The person in whose name the certificate for such Common Stock is to be issued shall be deemed to have become a stockholder of record on the Mandatory Conversion Date unless the transfer books of the Corporation are closed on that date, in which event it or he shall be deemed to have become a stockholder of record on the next succeeding date on which the transfer books are open.

6O(5) Notwithstanding anything to the contrary in subparagraphs 6O(1), 6O(2) or 6O(3), (i) the Mandatory Conversion Date may, with the written consent of the holders of a majority of the outstanding shares of Preferred Stock (calculated on an as-converted to Common Stock basis) (the "**Majority Holders**") delivered to the Corporation at any time and from time to time, be deferred to such later date as shall be set forth in such written consent and (ii) the Majority Holders may also elect in writing to waive the application of subparagraphs 6O(1), 6O(2) and 6O(3) such that the automatic conversions provided for therein do not occur.

6P. Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of at least fifty percent (50%) of the outstanding shares of such series; provided, however, that the approval of seventy-five percent of the Series BB Preferred Stock shall be required for any such waiver of the rights of the Series BB Preferred Stock. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

7. Redemption. The shares of Preferred Stock shall be redeemed as follows:

7A. Optional Redemption. The Corporation shall not have the right to call or redeem at any time all or any shares of Preferred Stock. Upon the written election of the holders of (x) not less than a majority of the then outstanding shares of Preferred Stock, consenting or voting (as the case may be) together as a single class, (y) not less than seventy-five percent (75%) of the then outstanding shares of Series BB Preferred Stock and (z) not less than a majority of the then outstanding shares of Series CC Preferred Stock, consenting or voting (as the case may be) as a

separate class, given at any time on or after May 19, 2009, the Corporation shall redeem, at one time (the "**Redemption Notice**"), all of the then outstanding Preferred Stock from funds legally available therefor (the "**Redemption Date**"). Upon receipt of the Redemption Notice, the Corporation will so notify in writing all other persons holding Preferred Stock of the scheduled redemption in accordance with paragraph 7C and shall include for redemption all outstanding shares of Preferred Stock. After receipt of the Redemption Notice, the Corporation shall fix the date for redemption of the Preferred Stock (the "**Redemption Date**") provided that such Redemption Date shall occur at least forty-five (45) days but not more than sixty (60) days after receipt by the Corporation of the Redemption Notice. All holders of Preferred Stock shall deliver to the Corporation during regular business hours, or at the office of any transfer agent of the Corporation for the Preferred Stock or at the principal office of the Corporation or at such other place as may be designated by the Corporation, the certificate or certificates for the Preferred Stock to be redeemed on the Redemption Date, duly endorsed for transfer to the Corporation (if required by it) on or before the Redemption Date.

7B. Redemption Price and Payment. The Preferred Stock to be redeemed on the Redemption Date shall be redeemed by paying for each share in cash an amount equal to (a) the Issuance Price, plus (b) an amount equal to all declared by unpaid dividends on each such share through the date such share is redeemed, such amount being referred to as the "**Redemption Price.**" Such payment shall be made in full on the Redemption Date to the holders entitled thereto with respect to their shares being redeemed on such date.

7C. Redemption Mechanics. At least twenty (20) days prior to the Redemption Date, written notice (the "**Corporation Redemption Notice**") shall be given by the Corporation by reputable overnight delivery service 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 Preferred Stock notifying such holder of the redemption and specifying the Redemption Price, the Redemption Date and the place where the said Redemption Price shall be payable.

The Corporation Redemption Notice shall be addressed to each holder of Preferred Stock at his address as shown by the records of the Corporation. From and after the close of business on the Redemption Date, unless there shall have been a default in the payment of the Redemption Price, all rights of holders of shares of Preferred Stock to be redeemed on such Redemption Date, (except the right to receive the Redemption Price) 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 Preferred Stock on the Redemption Date are insufficient to redeem the number of shares, if any, of Preferred Stock required under this paragraph 7 to be redeemed on such date, those funds which are legally available will be used to redeem the shares of Preferred Stock to be redeemed on such Redemption Date as follows: (1) first, shares of Series BB Preferred Stock and Series CC Preferred Stock held by a holder thereof shall be redeemed to the extent funds are legally available, *pari passu* on the basis of the aggregate Liquidation Preference Payments payable on such shares pursuant to Section 4 of Article V hereof, and if funds remain legally available after redeeming all shares of Series BB Preferred Stock and Series CC Preferred Stock, (2) second, shares of Series AA Preferred Stock held by a holder thereof shall be redeemed to the extent funds remain

legally available, pro-rata on the basis of the number of shares of Series AA Preferred Stock held by such holder. At any time thereafter when additional funds of the Corporation become legally available for the redemption of the Preferred Stock remaining outstanding, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of the shares of Preferred Stock which the Corporation was theretofore obligated to redeem according to the provisions of the preceding sentence.

7D. Redeemed or Otherwise Acquired Shares to be Retired. Any shares of Preferred Stock redeemed pursuant to this paragraph 7 or otherwise acquired by the Corporation in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Preferred Stock.

ARTICLE V

The number of shares of authorized Common Stock of the Corporation may be increased or decreased (but not below the number then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, notwithstanding any provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware to the contrary.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation, except as provided in this Corporation's Amended and Restated Certificate of Incorporation.

ARTICLE IX

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

2. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a

director, officer or employee of the Corporation or any subsidiary or any predecessor of the Corporation or any subsidiary or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any subsidiary or any predecessor to the Corporation or any subsidiary.

3. Neither any amendment nor repeal of this ARTICLE IX, nor the adoption of any provision of this Corporation's Amended and Restated Certificate of Incorporation inconsistent with this ARTICLE IX, shall eliminate or reduce the effect of this ARTICLE IX, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE IX, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.