

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
6TH SENSE ANALYTICS, INC.

The undersigned hereby certifies that:

FIRST: The date of filing the original Certificate of Incorporation under the name, 6th Sense Software, Inc. (the "*Corporation*"), with the Secretary of State of the State of Delaware was August 20, 2004.

SECOND: He is the duly elected and acting President of the Corporation.

THIRD: The Certificate of Incorporation of the Corporation, as amended to date and in effect on the date hereof is hereby amended and restated in its entirety to read as follows (the "*Certificate*"):

ARTICLE I

The name of the corporation is 6th Sense Analytics, Inc. (the "*Corporation*").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 3500 S. Dupont Highway, in the City of Dover, Kent County, Delaware 19901, and the name of the registered agent is Incorporating Services, Ltd.

ARTICLE III

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the "*DGCL*").

ARTICLE IV

The Corporation is authorized to issue 31,000,000 total shares of capital stock, \$0.0001 par value per share, of which 20,000,000 shares shall be Common Stock, par value \$0.0001 per share (the "*Common Stock*") and of which 11,000,000 shares shall be Preferred Stock, par value \$0.0001 per share (the "*Preferred Stock*").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors of the Corporation (the "**Board**") upon any issuance of the Preferred Stock of any series.

2. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as, if and when determined by the Board, subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, subject to any preferential rights of any then outstanding Preferred Stock, as herein provided, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders.

B. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board as hereinafter provided. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board, in accordance with this Amended and Restated Certificate of Incorporation (this "**Certificate**"), from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the DGCL and this Certificate, and subject to any requirements of this Certificate, to fix or alter the number of shares comprising any such series and the designation thereof. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law.

Three Million Five Hundred Thousand (3,500,000) of the authorized shares of Preferred Stock are hereby designated "Series 1 Preferred Stock", \$0.0001 par value per share (the "**Series**

1 Preferred”), and Seven Million Five Hundred Thousand (7,500,000) of the authorized shares of Preferred Stock are hereby designated “Series A Preferred Stock”, \$0.0001 par value per share (the “*Series A Preferred*”).

The powers, preferences, rights, privileges and restrictions, qualifications and limitations of the Preferred Stock are as follows:

1. Dividends

(a)(i) The holders of shares of Series A Preferred will be entitled to receive cumulative dividends at a rate equal to eight percent (8%) of the Series A Original Price (hereafter defined) per share per annum (“*Series A Cumulative Dividends*”). “*Series A Original Price*” will mean \$0.704 per share of Series A Preferred, which amount will be adjusted for any stock splits, stock dividends, recapitalizations or the like (collectively, “*Recap Events*”) occurring after the date hereof. Prior to the occurrence of a Liquidating Event (as defined in Section 2(c)) or a redemption of the Series A Preferred, Series A Cumulative Dividends will be payable in cash or in shares of Common Stock at the Corporation’s option, *provided, however*, that cash dividends shall be payable only out of funds that are legally available therefor, and if such funds are not available, then such dividends shall be paid in additional shares of Common Stock. The Series A Cumulative Dividends will be prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), distribution or payment of any kind on the Series 1 Preferred, the Common Stock or any other equity securities of the Corporation (or securities convertible into equity securities of the Corporation) other than the Series A Preferred, and will be payable when, as and if declared by the Board. Unless otherwise required by law, Series A Cumulative Dividends will accrue on each share of Series A Preferred commencing on the date of issue of such share, whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation available for the payment of dividends.

(ii) Following payment of all dividends on the Series A Preferred, the holders of shares of Series 1 Preferred will be entitled to receive cumulative dividends at a rate equal to eight percent (8%) of the Series 1 Original Price (hereafter defined) per share per annum (“*Series 1 Cumulative Dividends*”). “*Series 1 Original Price*” will mean \$0.50 per share of Series 1 Preferred, which amount will be adjusted for any Recap Events occurring after the date hereof. Prior to the occurrence of a Liquidating Event (as defined in Section 2(c)) or a redemption of the Series 1 Preferred, Series 1 Cumulative Dividends will be payable in cash or in Common Stock at the option of the Corporation, *provided, however*, that cash dividends shall be payable only out of funds that are legally available therefor, and if such funds are not available, then such dividends shall be paid in additional shares of Common Stock. Notwithstanding the foregoing and following payment of all dividends on the Series A Preferred as herein provided, in the event of any default in the redemption of the Series 1 Preferred pursuant to this Certificate, the Series 1 Cumulative Dividends shall increase to a rate equal to twelve percent (12%) of the Series 1 Original Price per share per annum, but only during the period of such default. The Series 1 Cumulative Dividends will be prior and in preference to any

declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), distribution or payment of any kind on the Common Stock or any other equity securities of the Corporation or securities convertible into equity securities of the Corporation (other than the Series A Preferred and the Series 1 Preferred), and will be payable when, as and if declared by the Board. Unless otherwise required by law, Series 1 Cumulative Dividends will accrue on each share of Series 1 Preferred commencing on the date of issue of such share, whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation available for the payment of dividends.

(b) So long as any shares of Preferred Stock are outstanding, the Corporation shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock until all dividends as set forth in Section 1(a)(i) and (a)(ii) on the Preferred Stock shall have been paid or declared and set apart as set forth in Section (a)(i) and (a)(ii), except for (i) acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation, which acquisitions have been approved by a majority of the Board, including a majority of the directors elected by the holders of Series A Preferred, voting as a separate class, or are in effect on the date of the filing hereof; and (ii) acquisitions of Common Stock in exercise of the Corporation's right of first refusal to repurchase such shares, which acquisitions have been approved by a majority of the Board, including a majority of the directors elected by the holders of Series A Preferred, voting as a separate class.

(c) If dividends are paid on any share of Common Stock, the Corporation shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

2. Liquidation

(a)(i) Preference on Liquidation. Upon the occurrence of any Liquidating Event, each holder of Series A Preferred then outstanding will be paid, out of the assets of the Corporation available for distribution to its stockholders, before any payment will be made in respect of the Series 1 Preferred, the Common Stock, or any other equity securities of the Corporation an amount equal to the Series A Original Price per share of Series A Preferred, plus accrued dividends that are then unpaid for each share of Series A Preferred then held by it (the "**Series A Preference Amount**"), subject to appropriate adjustment in the event of any Recap Event affecting such shares.

(ii) If after payment of the Series A Preference Amount, any assets of the Corporation remain legally available for distribution after the occurrence of a Liquidating Event, then each holder of Series 1 Preferred then outstanding will be paid, out of the assets of the Corporation available for distribution to its stockholders, before any payment will be made in respect of the Common Stock or any other equity securities of the Corporation, an

amount equal to the Series 1 Original Price per share of Series 1 Preferred, plus accrued dividends that are then unpaid for each share of Series 1 Preferred then held by it (the "*Series 1 Preference Amount*", and together with the Series A Preference Amount, the "*Preference Amounts*"), subject to appropriate adjustment in the event of any Recap Event affecting such shares.

(b) Payment on Liquidation.

(i) Written notice of any such Liquidating Event stating a payment date, the place where such payment will be made, the amount of each payment in liquidation and the amount of dividends to be paid will be given by first class mail, postage prepaid, not less than thirty (30) days prior to the payment date stated therein, to each holder of record of the Preferred Stock at such holder's address as shown in the records of the Corporation, provided that any holder of Preferred Stock may convert its shares of Preferred Stock to Common Stock during such period at any time prior to the payment date stated in such notice.

(ii) If, upon the occurrence of a Liquidating Event, the assets of the Corporation available for distribution to its stockholders will be insufficient to pay the holders of the Series A Preferred the full Series A Preference Amount to which they will be entitled, the holders of the Series A Preferred will share ratably in the distribution of all of the Corporation's assets (so that each holder receives the same percentage of the applicable Series A Preference Amount per share). If the holders of the Series A Preferred have been paid their full Series A Preference Amount per share of Series A Preferred as aforesaid, and the Corporation has remaining assets but in an amount insufficient to pay the holders of the Series 1 Preferred the full Series 1 Preference Amount to which they are entitled, the holders of the Series 1 Preferred will share ratably in any distribution of the remaining assets (so that each holder receives the same percentage of the applicable Series 1 Preference Amount per share).

(iii) After payment has been made to the holders of the Preferred Stock of the full Preference Amounts, as aforesaid, any remaining assets will be distributed ratably among the holders of the Common Stock and Preferred Stock as if such shares of Preferred Stock had been converted voluntarily into Common Stock immediately prior to such Liquidating Event.

(iv) Notwithstanding the foregoing, if the amount to be distributed to the holders of the Series 1 Preferred upon a Liquidating Event would be greater than seven (7) times the Series 1 Original Price were the entire distribution made to the holders of Common Stock and the holders of Series 1 Preferred (each share of which will be treated for purposes of such distribution as the number of shares of Common Stock into which such share could then be converted) and after taking into account the distribution to the holders of the Series A Preferred, then each holder of Series 1 Preferred will receive, in lieu of receiving the Series 1 Preference Amount, only its ratable share of the Corporation's assets as if such shares of such Series 1 Preferred had been converted voluntarily into Common Stock at the then applicable conversion rate immediately prior to such Liquidating Event.

(c) Liquidating Event. A "*Liquidating Event*" will mean (i) any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, (ii) a sale, transfer or other disposition of all or substantially all the assets of the Corporation to an entity that is not controlled, directly or indirectly, by the stockholders of the Corporation; for purposes of this definition, "*control*" will mean ownership of more than fifty percent (50%) of the voting power of an entity or (iii) any transaction resulting in a change of control; for purposes of this definition, a "*change of control*" means that upon the close of a transaction (including, without limitation, any transaction to which the Corporation is not a party, including, without limitation, a share exchange and/or any transfer(s) of shares by one or more of the Corporation's stockholders as of the date hereof) in which the stockholders of the Corporation immediately prior to the transaction hold less than fifty percent (50%) of the voting power of the resulting entity, or the grant of an exclusive license to all or substantially all of the Corporation's intellectual property or technology; *provided, however*, if the holders of a majority of the shares of Series A Preferred, voting as a single class, so elect by giving written notice to the Corporation before the effective date of a transaction that would otherwise be a Liquidating Event, such transaction will not be deemed a Liquidating Event for any purposes pursuant to this Certificate.

3. Voting

(a) Voting Rights. Except as otherwise expressly provided herein or as required by law, the holder of each share of Preferred Stock will be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could then be converted and will have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and will be entitled to notice of each stockholders' meeting in accordance with the Bylaws of the Corporation (the "*Bylaws*"). Fractional votes will not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which shares of Preferred Stock held by each holder could be converted) will be reduced to the nearest whole number.

(b) Board. The Board will consist of five (5) directors, which will be constituted as follows: (i) two (2) directors will be elected by the holders of a majority of the Series A Preferred, voting together as a separate class, , (ii) two (2) directors will be elected by the holders of a majority of the Common Stock, voting together as a separate class; *provided, however*, that the directors to be elected by the holders of the Common Stock must be approved by both directors elected by the holders of the Series A Preferred, and (iii) one (1) director will be an independent, "outside" director elected by the holders of a majority of the Preferred Stock and the Common Stock, voting together as a single class. If the Corporation fails to redeem any shares of Preferred Stock pursuant to Section 8 at any time, then until such time, if ever, that the Corporation cures such default, the Board will immediately consist of nine (9) directors; five (5) of whom will be elected as provided in the immediately preceding sentence and the four (4) additional directors will be elected by the holders of 66.7% of the Series A Preferred, voting together as a separate class. In the case of any vacancy in the office of a director occurring among the directors elected by the holders of a group described above, the remaining director so elected by the holders of a majority in interest of such group may, or if there is no such director

remaining, the holders of such group, voting as a group, will be entitled to appoint a successor or successors to hold the office for the unexpired term of the director or directors whose place or places will be vacant. Any director who will have been elected by the holders of a group described above may be removed during his or her term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of shares of such group.

(c) Protective Provisions of Series A Preferred. In addition to any other rights provided by law or as set forth in this Certificate, so long as any shares of Series A Preferred shall remain outstanding, the Corporation will not, without first obtaining the affirmative vote or written consent of the holders of at least 66.7% of the then-outstanding shares of Series A Preferred, consenting or voting separately as a class:

(i) take any action that alters or changes the powers, rights, preferences or privileges of the Preferred Stock;

(ii) take any action that increases or decreases the total number of authorized shares of the Preferred Stock;

(iii) authorize or issue any new or existing class or classes or series of capital stock having any preference or priority on parity with or senior to the Preferred Stock as to dividends, liquidation, redemption, conversion, voting or assets, or authorize or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Corporation having any preference or priority on parity with or senior to the Preferred Stock as to dividends, liquidation, redemption, conversion, voting or assets;

(iv) reclassify or recapitalize any outstanding capital stock of the Corporation;

(v) amend, alter or repeal any provision of, or add any provision to, this Certificate or the Bylaws then in effect (including, without limitation, any filing of a Certificate of Designation), whether by merger, reclassification or otherwise;

(vi) pay or declare any dividend or distribution (other than a dividend or distribution payable solely in the Corporation's capital stock) on any shares of its capital stock (other than the Preferred Stock), or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of its capital stock, except for repurchases of shares from former employees, directors or consultants pursuant to the terms of such former employees', directors' or consultants' stock purchase or restricted stock agreements providing for such repurchases at the original issuance prices for such shares;

(vii) effectuate or permit to occur any Liquidating Event; or

(viii) undertake any public offering of the Corporation's securities other than a Qualified Initial Public Offering (hereafter defined).

4. Conversion Rights

(a) Each share of Preferred Stock will be convertible at the option of the holder thereof, at any time after the issuance of such share, into that number of fully paid and nonassessable shares of Common Stock as is obtained by (i) multiplying the number of shares of Preferred Stock to be so converted by the applicable Series A or Series 1 Original Price for such shares of Preferred Stock and (ii) dividing the result by the "Series A Conversion Price" or the Series 1 Conversion Price", as applicable, in each case subject to adjustment as herein provided (the "*Conversion Price*"). The initial "*Series A Conversion Price*" will be the Series A Original Price and the initial "*Series 1 Conversion Price*" will be the Series 1 Original Price, and shall be subject to adjustment from time to time as herein provided.

(b) The holder of any shares of Preferred Stock may exercise the conversion rights as to such shares or any part thereof by delivering to the Corporation during regular business hours, 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 shares to be converted, duly endorsed for transfer to the Corporation or accompanied by a written instrument or instruments of transfer (if required by it), accompanied by written notice stating that the holder elects to convert all or a number of such shares represented by the certificate or certificates. Such notice will also state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. Conversion will be deemed to have been effected on the date when such delivery is made, and such date is referred to herein as the "*Conversion Date*". As promptly as practicable thereafter the Corporation will issue and deliver to such holder, at such office or other place designated by the Corporation, a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled and a check for cash with respect to any fractional interest in a share of Common Stock as provided in Subsection 4(c) and the Corporation shall also remit to the holder of the Preferred Stock, in cash or in Common Stock (at the Common Stock's fair market value determined by the Board as of the Conversion Date), at the Company's election, any accrued and unpaid or declared and unpaid dividends on the shares of Preferred Stock being converted. The holder will be deemed to have become a stockholder of record on the applicable Conversion Date. Upon conversion of only a portion of the number of shares of Preferred Stock represented by a certificate surrendered for conversion, the Corporation will issue and deliver to the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Preferred Stock representing the unconverted portion of the certificate so surrendered.

(c) No fractional shares of Common Stock or scrip will be issued upon conversion of shares of Preferred Stock. If more than one share of Preferred Stock will be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof will be computed on the basis of the aggregate number of shares of Preferred Stock so surrendered. Instead of any fractional shares of Common Stock that would otherwise be issuable upon conversion of any shares of Preferred Stock, the Corporation will pay a cash adjustment in respect of such fractional interest equal to the fair market value of such fractional interest as determined in good faith by the Board. The

Corporation will pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Preferred Stock pursuant hereto. The Corporation will not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Preferred Stock so converted was registered, and no such issue or delivery will be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) The Corporation will at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all Preferred Stock from time to time outstanding. The Corporation will from time to time use its best effort to obtain necessary director and stockholder approvals, in accordance with the laws of the State of Delaware, to increase the authorized amount of its Common Stock if at any time the authorized amount of its Common Stock remaining unissued will not be sufficient to permit the conversion of all of the shares of Preferred Stock at the time outstanding, and will take all such actions as are necessary to increase such authorized amount of Common Stock upon obtaining such approvals.

(e) If the Common Stock issuable upon the conversion of Preferred Stock will be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for in Section 5(a) through (d)), then and in each such event the holder of each share of Preferred Stock will have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification, or change.

(f) In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale treated as a Liquidating Event pursuant to Section 2(c)(ii) or (iii)), each share of Preferred Stock will thereafter be convertible into the kind and amount of shares of stock or other securities or property that a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of Preferred Stock would have been entitled upon such consolidation, merger or sale; and in such case, appropriate adjustment (as determined in good faith by the Board) will be made in the application of the provisions of this Section 4 and Section 5 with respect to the rights and interest thereafter of the holders of Preferred Stock, to the end that the provisions set forth in Sections 5 and 6 will thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of Preferred Stock.

(g) If any shares of Common Stock to be reserved for the purpose of conversion of shares of Preferred Stock require registration or listing with, or approval of, any governmental authority, stock exchange or other regulatory body under any federal or state law or

regulation or otherwise, before such shares may be validly issued or delivered upon conversion, the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration, listing or approval, as the case may be.

(h) All shares of Common Stock that may be issued upon conversion of the shares of Preferred Stock will upon issuance by the Corporation be validly issued, fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof.

5. Adjustment of Conversion Price

The Conversion Price from time to time in effect will be subject to adjustment from time to time as follows.

(a) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the date hereof effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the outstanding Preferred Stock, each applicable Conversion Price then in effect immediately before that subdivision shall be proportionately decreased; conversely, if the Corporation shall at any time or from time to time after the date hereof reduce the outstanding shares of Common Stock by combination or otherwise without a corresponding combination of the outstanding shares of Preferred Stock, each applicable Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

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

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

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price for the Preferred Stock shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price for each series of the Preferred Stock shall be adjusted pursuant to this Section 5(b) as of the time of actual payment of such dividends or distributions.

(c) Adjustments for Other Dividends and Distributions. If the Corporation at any time or from time to time after the date hereof shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had such shares of Preferred Stock been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including date of conversion, retained such securities receivable by them as aforesaid during such period giving application to all adjustments called for during such period under this Section 5 with respect to the rights of the holders of Preferred Stock.

(d) Adjustment for Reclassification, Exchange or Substitution. If the Common Stock issuable upon the conversion of the Preferred Stock shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization or an event described in subsections (i) or (ii) of the definition of Liquidating Event in Section 2(c) (a "*Sale Transaction*") provided for elsewhere in this Section 5), then and in each such event the holder of each share of Preferred Stock shall have the right thereafter to convert such share into the kind and amounts of shares of stock and other securities and property receivable upon such reorganization, reclassification or other change, by holders of the numbers of shares of Common Stock into which such shares of Preferred Stock might have been converted immediately prior to such reorganization, reclassification or change, all subject to further adjustment as provided herein.

(e) Adjustment for Reorganization, Mergers, Consolidations or Sales of Assets. If at any time or from time to time there shall be a capital reorganization of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 5) or a Sale Transaction to which the provisions of Section 2 hereof do not apply, and if as a part of such reorganization or Sale Transaction the Preferred Stock is not cancelled, exchanged, redeemed or otherwise retired, then provision shall be made so that each holder of shares of Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such Sale Transaction to which a holder of that number of shares of Common Stock deliverable upon conversion of such shares of Preferred Stock would have been entitled on such capital reorganization or Sale Transaction. In any such case, appropriate adjustment shall be made in the application of the provisions of this

Section 5 with respect to the rights of the holders of the Preferred Stock after the reorganization or Sale Transaction to the end that the provisions of this Section 5 (including adjustment of the applicable Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) Noncash Dividends, Capital Reorganizations and Dissolutions. In case:

(i) the Corporation will take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or any other distribution, payable otherwise than in cash; or

(ii) the Corporation will take a record of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase any shares of stock of any class or to receive any other rights; or

(iii) of any capital reorganization of the Corporation, reclassification of its capital stock (other than a subdivision or combination of its outstanding shares of Common Stock), consolidation or merger of the Corporation with or into another Corporation that is not a Liquidating Event or conveyance of all or substantially all of the assets of the Corporation to another Corporation that is not a Liquidating Event;

then, and in any such case, the Corporation will cause to be mailed to the transfer agent for the Preferred Stock and to the holders of record of the outstanding Preferred Stock, at least 10 days prior to the date hereinafter specified, a notice stating the date on which (A) a record is to be taken for the purpose of such dividend, distribution or rights or (B) such reclassification, reorganization, consolidation, merger, conveyance, dissolution, liquidation or winding up is to take place and the date, if any is to be fixed, as of which holders of Common Stock of record will be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger, conveyance, dissolution, liquidation or winding up.

(g) Payment of Taxes. The Corporation will pay all taxes and other governmental charges (other than taxes measured by the revenue or income of the holders of the Preferred Stock) that may be imposed in respect of the issue or delivery of shares of Common Stock upon conversion of the shares of the Preferred Stock.

(h) No Dilution or Impairment. The Corporation shall not amend this Certificate or participate in any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed under this Section 5 or Section 7 by the Corporation, but will at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to

protect the conversion rights of the holders of the Preferred Stock against dilution or other impairment.

6. Mandatory Conversion

(a) Each share of Preferred Stock will automatically be converted into shares of Common Stock at the Conversion Price applicable to the shares of Preferred Stock upon the occurrence of (i) a closing of a firmly 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 Corporation to the public and raising net proceeds of \$30,000,000 or more at a price per share in such offer and sale of not less than eight (8) times the Series A Original Price (that is, \$5.63), as adjusted for any Recap Events occurring after the date hereof (a "*Qualified Initial Public Offering*"), or (ii) the affirmative vote of the holders of at least 66.67% of the Series A Preferred voting together as a single class. All holders of record of shares of Preferred Stock will be given at least 20 days prior written notice of the date fixed for mandatory conversion of the Preferred Stock and the event causing the mandatory conversion of the Preferred Stock into Common Stock. Such notice will be sent by first class mail, postage prepaid, to each holder of record of Preferred Stock at such holder's address as shown in the records of the Corporation. On or before the date so fixed for conversion, each holder of shares of the Preferred Stock will surrender the certificate or certificates for all such shares to the Corporation at the place designated in such notice and will thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled. The mechanics for conversion and other provisions relating to conversion of Preferred Stock into Common Stock set forth elsewhere in this Certificate will apply to the mandatory conversion of the Preferred Stock, *provided, however*, that the Corporation shall also pay to the holder of the Preferred Stock, in cash or, in Common Stock, at the Company's election, (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any accrued and unpaid or declared and unpaid dividends on the shares of Preferred Stock being converted.

7. Issuances at Less Than the Applicable Conversion Price.

(a) If at any time or from time to time after the date hereof, the Corporation shall issue or sell, or is deemed by the express provisions of subsection (c) below to have issued or sold, Additional Shares of Common Stock (hereafter defined), other than in a transaction to which Section 5(a) through (e) above applies, for a consideration per share less than the applicable Conversion Price then in effect for a share of Preferred Stock, then the applicable Conversion Price then in effect for such Preferred Stock shall be reduced as of the opening of business on the date of such issue or sale, to a price (calculated to the nearest cent) determined by multiplying the then applicable Conversion Price for such Preferred Stock by a fraction (i) the numerator of which shall be (A) the total number of shares of Common Stock issued and outstanding immediately prior to such issue or sale, plus (B) the total number of shares of Common Stock issuable upon conversion of all outstanding Convertible Securities (hereafter defined) or Stock Purchase Rights, hereafter defined (the shares reflected in (A) and

(B), collectively, "*Outstanding Shares*"), plus (C) the total number of shares of Common Stock that the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price applicable to such Preferred Stock before this adjustment, and (ii) the denominator of which shall be (A) the total number of Outstanding Shares immediately prior to such issue or sale, plus (B) the number of such Additional Shares of Common Stock so issued.

If the number of Additional Shares of Common Stock or the aggregate consideration for such number of Additional Shares of Common Stock cannot be ascertained at the time of issuance, such Additional Shares of Common Stock shall be deemed issued immediately upon the occurrence of the first event that makes such number of shares or the aggregate consideration, as applicable, determinable.

(b) For the purpose of making any adjustment in the applicable Conversion Price or number of shares of Common Stock purchasable on conversion of Preferred Stock as provided above, the consideration received by the Corporation for the issuance, sale, grant or assumption of shares of Common Stock, Stock Purchase Rights or Convertible Securities, irrespective of the accounting treatment of such consideration, will be valued as follows:

(i) Cash Payment. In the case of cash, the net amount received by the Corporation after deduction of any accrued interest or dividends and after deducting any expenses paid or incurred and any underwriting commissions or concessions paid or allowed by the Corporation in connection with such issue or sale;

(ii) Noncash Payment. In the case of consideration other than cash, the value of such consideration, including the value of any loan made in connection with the issuance of Stock Purchase Rights or Convertible Securities, which will not include the value of any Convertible Securities being converted or exchanged, as determined by the Board in good faith, after deducting any accrued interest or dividends; and

(iii) Stock Purchase Rights and Convertible Securities. The total consideration, if any, received by the Corporation as consideration for the issuance of the Stock Purchase Rights or the Convertible Securities, as the case may be, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise of such Stock Purchase Rights or upon the conversion or exchange of such Convertible Securities, as the case may be, in each case after deducting any accrued interest or dividends.

(iv) Where as part of the same transaction or series of related transactions occurring within a sixty (60) day period more than one type of Convertible Securities and/or Stock Purchase Rights or both Convertible

Securities and Stock Purchase Rights are issued, the determination as to whether an issuance of securities pursuant to Section 7(a) has occurred will be made on an aggregate basis, taking into account all Convertible Securities and all Stock Purchase Rights whose conversion or exercise are conditioned on the conversion or exercise of the other Convertible Securities and Stock Purchase Rights.

(c) For the purpose of the adjustment provided in Section 7(a), if at any time or from time to time after the date hereof, the Corporation shall issue any Stock Purchase Rights or Convertible Securities (hereafter defined), then in each case, if the Subsection (c) Effective Price (hereafter defined) of such warrants, options, rights or Convertible Securities shall be less than the then applicable Conversion Price for the Preferred Stock, the Corporation shall be deemed to have issued at the time of the issuance of such Stock Purchase Rights or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such Stock Purchase Rights or Convertible Securities, plus, in the case of such Stock Purchase Rights, the minimum amounts of consideration, if any, payable to the Corporation upon exercise or conversion of such Stock Purchase Rights. For purposes of the foregoing, "*Subsection (c) Effective Price*" shall mean the quotient determined by dividing the total of all such consideration by such maximum number of Additional Shares of Common Stock. No further adjustment of the applicable Conversion Price adjusted upon the issuance of such Stock Purchase Rights or Convertible Securities shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such Stock Purchase Rights or the conversion of any such Convertible Securities.

If any such Stock Purchase Rights or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the applicable Conversion Price adjusted upon the issuance of such Stock Purchase Rights or Convertible Securities shall be readjusted to the applicable Conversion Price that would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such Stock Purchase Rights, or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Stock Purchase Rights, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted plus the consideration, if any, actually received by the Corporation on the conversion of such Convertible Securities.

(d) For the purpose of the adjustment provided for in Section 7(a), if at any time or from time to time after the date hereof the Corporation shall issue any rights or options for the purchase of Convertible Securities, then in each such case, if the Subsection (d) Effective Price (hereafter defined) thereof is less than the current applicable Conversion Price of a series of Preferred Stock, the Corporation shall be deemed to have issued at the time of the

issuance of such rights or options the maximum number of Additional Shares of Common Stock issuable upon conversion of the total amount of Convertible Securities covered by such rights or options and to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration, if any, received by the Corporation for the issuance of such rights or options, plus the minimum amounts of consideration, if any, payable to the Corporation upon the conversion of such Convertible Securities. For purposes of the foregoing, "**Subsection (d) Effective Price**" shall mean the quotient determined by dividing the total amount of such consideration by such maximum number of Additional Shares of Common Stock. No further adjustment of such Conversion Price adjusted upon the issuance of such rights or options shall be made as a result of the actual issuance of the Convertible Securities upon the exercise of such rights or options, or upon the actual issuance of Additional Shares of Common Stock upon the conversion of such Convertible Securities.

The provisions of subsection (c) above for the readjustment of such applicable Conversion Price upon the expiration of rights or options or the rights of conversion of Convertible Securities, shall apply *mutatis mutandis* to the rights, options and Convertible Securities referred to in this subsection (d).

Notwithstanding the foregoing, the applicable Conversion Price will be reduced at such time if such reduction would be an amount less than \$0.001, but any such amount will be carried forward and deduction with respect thereto made at the time of and together with any subsequent reduction that, together with such amount and any other amount or amounts so carried forward, will aggregate \$0.001 or more.

(e) For purposes of this Section 7, the following provisions will be applicable:

(i) The term "**Additional Shares of Common Stock**" as used herein shall mean all shares of Common Stock issued or deemed issued by the Corporation after the date hereof, whether or not subsequently reacquired or retired by the Corporation, other than the issuance of shares of the Corporation's capital stock pursuant to subsection (f), "**Exclusions**", below.

(ii) "**Convertible Securities**" will mean evidences of indebtedness, shares of stock (including, without limitation, the Preferred Stock) or other securities that are convertible into or exchangeable for, with or without payment of additional consideration, Additional Shares of Common Stock.

(iii) "**Stock Purchase Rights**" will mean any warrants, options or other rights to subscribe for, purchase or otherwise acquire any shares of Common Stock or any Convertible Securities.

(iv) Convertible Securities and Stock Purchase Rights will be deemed outstanding and issued or sold at the time of such issue or sale.

(f) Exclusions. Anything herein to the contrary notwithstanding, the Corporation will not be required to make any adjustment of the Conversion Price in the case of (i) the issuance or sale of Common Stock or of options (or restricted stock awards), or the shares of stock issuable upon exercise of such options, to purchase up to 3,323,506 shares, subject to adjustment for Recap Events, to directors, officers, employees or consultants of the Corporation pursuant to stock options or stock purchase plans or agreements, whether "qualified" for tax purposes or not, pursuant to plans or arrangements approved by the Board, (ii) the issuance or sale of Common Stock pursuant to a Qualified Initial Public Offering, (iii) the issuance or sale of Common Stock or the sale of warrants to purchase shares of Common Stock (or shares of Common Stock pursuant to the exercise of such warrants) to the Corporation's strategic partners or in connection with other strategic transactions in an amount not to exceed five percent (5%) of the Common Stock, as calculated on a fully diluted basis, if such issuance and sale is approved by the Board (such approval shall include at least one of the directors elected by the holders of shares of Series A Preferred Stock), (iv) the issuance or sale of warrants to purchase shares of Common Stock (or shares of Common Stock pursuant to the exercise of such warrants) to the Corporation's lenders and/or equipment lessors in an amount not to exceed one percent (1%) of the Common Stock, as calculated on a fully diluted basis, if such issuance and sale is approved by the Board (such approval shall include at least one of the directors elected by the holders of shares of Series A Preferred Stock), (v) the issuance of Common Stock upon conversion of the Preferred Stock and any warrants issued and outstanding the date of the first sale of Series A Preferred Stock for shares of Preferred Stock, or (vi) the issuance of any shares of the Corporation's capital stock upon the conversion or exercise of Stock Purchase Rights or Convertible Securities, the issuance of which was subject to the provisions of Section 7(a) above or was excluded therefrom pursuant to this Section 7(f); *provided, however*, that the holders of 66.7% of the shares of Series A Preferred Stock may waive on behalf of all holders of Preferred Stock any adjustments otherwise applicable pursuant to this Section 7. The issuances or sales described in the preceding clauses (i) through (vi) will be ignored for purposes of calculating any adjustment to any Conversion Price.

(g) Notice of Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price pursuant to this Section 7, the Corporation at its expense will promptly compute such adjustment or readjustment in accordance with the terms thereof, and prepare and furnish to each holder of Preferred Stock affected thereby a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation will, upon the written notice 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 adjustment or readjustment, (ii) the applicable Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such holder's shares.

8. Redemption.

(a) Mandatory Redemption. Subject to the terms and conditions of this Section 8, including, but not limited to, subsection (d) below, the Corporation shall, upon receiving at any time on or after the fifth (5th) anniversary of the date of the first sale of Series A

Preferred Stock, a written request (a "***Redemption Notice***") for the redemption of the outstanding shares of a series of Preferred Stock under this Section 8 signed by the holders of at least 66.67% of then outstanding shares of such series, redeem any such outstanding shares of such series (the "***Redemption Shares***") within thirty (30) days after the date set forth in such Redemption Notice (the "***Redemption Date***"), in accordance with the procedures set forth in this Section 8. The Corporation shall redeem the Redemption Shares from any source of funds legally available therefor at the applicable Redemption Price (as defined in Section 8(b)), until all outstanding Redemption Shares have been redeemed (or converted to Common Stock) from the holders thereof (the "***Redeeming Holders***").

(b) **Redemption Price.** The redemption price (the "***Redemption Price***") for each share of Preferred Stock shall be the Series A Original Price or the Series 1 Original Price applicable to such share of Preferred Stock, plus all accrued and unpaid dividends on each such share through the Redemption Date.

(c) **Redemption Closings.** In the event of any redemption in accordance with this Section 8, the Corporation shall purchase, and the Redeeming Holders shall sell, the Redemption Shares on the Redemption Date (the "***Redemption Closing***"). The Corporation shall notify in writing all Redeeming Holders of the date and place of the Redemption Closing at least seven (7) days prior to such Redemption Closing. At the Redemption Closing, the Redeeming Holders shall deliver to the Corporation certificates representing the Redemption Shares held by such Redeeming Holders. If less than all of the shares represented by such certificate are redeemed, then the Corporation shall promptly issue a new certificate representing the unredeemed shares. The Corporation shall deliver to each Redeeming Holder the Redemption Price for each share of Preferred Stock to be sold to the Corporation at the Redemption Closing in cash (by cashier's or certified check or by wire transfer of immediately available funds to an account designated by such holder).

(d) **Redemption Funds; Priority of Redemptions.** Notwithstanding anything to the contrary contained herein, no Redemption Notice shall be effective in respect of the Series 1 Preferred unless and until a Redemption Notice has been received in respect of the Series A Preferred. If on any date on which shares of a series of Preferred Stock are to be redeemed, funds of the Corporation legally available therefor shall be insufficient to redeem all of the Redemption Shares required to be redeemed as provided for herein on such date, funds to the extent legally available to redeem only such Redemption Shares, shall be used for such purpose and the Corporation shall redeem the Redemption Shares held by the holders of Series A Preferred out of any funds and assets of the Corporation legally available therefor. If funds of the Corporation legally available therefor shall be insufficient to redeem all of the Series A Preferred required to be redeemed as provided for herein on such date, then the Series A Preferred shall be redeemed on a *pro rata* basis determined by multiplying the Redemption Price payable to the holders of Series A Preferred by a fraction the numerator of which shall be the number of shares of Series A Preferred held by such Redeeming Holder and the denominator of which shall be the aggregate number of all shares of Series A Preferred held by all Redeeming Holders. After all shares of Series A Preferred have been redeemed by the Corporation, the holders of the then

outstanding shares of Series 1 Preferred shall be entitled to have their shares of Series 1 Preferred redeemed, out of any funds and assets of the Corporation legally available therefor. If funds of the Corporation legally available therefor shall be insufficient to redeem all of the shares of Series 1 Preferred required to be redeemed as provided for herein on such date, then the shares of Series 1 Preferred shall be redeemed on a *pro rata* basis determined by multiplying the Redemption Price payable to the holders of shares of Series 1 Preferred by a fraction the numerator of which shall be the number of shares of Series 1 Preferred held by such Redeeming Holder and the denominator of which shall be the aggregate number of shares of Series 1 Preferred held by all Redeeming Holders.

(e) Effect of Redemption. If a Redemption Notice shall have been duly given, and if on a Redemption Closing the applicable Redemption Price is either paid in full or made available for immediate payment in full, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, all dividends with respect to such shares shall cease to accrue after the date of the applicable Redemption Closing, such shares shall not thereafter be transferred on the Corporation's books and all rights of the holders of such shares with respect to such shares shall terminate after such Redemption Closing, except only the right of the holders to receive the applicable Redemption Price without interest upon surrender of their certificate(s) therefor.

9. Events of Non-Compliance.

(a) Remedies Upon an Event of Non-Compliance. Upon the occurrence of an Event of Non-Compliance (hereafter defined), at least one of the holders of Series A Preferred must provide written notice to the Corporation and each of the other holders of the Preferred Stock of such occurrence (using such addresses as are then current on the books and records of the Corporation). The Corporation will have fifteen (15) days from the date of such notice to remedy the Event of Non-Compliance; *provided, however*, that no such remedy shall be required upon the consent of the holders of at least two-thirds (66-2/3%) in interest of the then outstanding Series A Preferred to waive their rights under this Section 9 with respect to such Event of Non-Compliance. If after such fifteen (15) day period, the Corporation has not cured the Event of Non-Compliance and no such waiver has been provided, then in addition to any dividends otherwise payable on the Series A Preferred, from and after the date of such Event of Non-Compliance, in addition to those provided for pursuant to Section 1(a)(i), dividends will accrue and be payable with respect to the Series A Preferred quarterly at the rate of ten percent (10%) per annum on the Series A Original Issue Price until the Event of Non-Compliance is cured by the Corporation or waived by the holders of at least two-thirds (66-2/3%) in interest of the then outstanding Series A Preferred, and any holder of Series A Preferred will have the right to convert any such accrued and unpaid dividends into shares of Common Stock at the then current and applicable Series A Conversion Price.

(b) The remedies provided for in this Section 9 will be in addition to any other rights and remedies under applicable law, in equity, or provided for in or contemplated by any agreements between the Corporation and any holders of Series A Preferred and will be

cumulative and non-exclusive with any such other rights and remedies and in the event of any actual conflict or inconsistency herewith and therewith, the terms set forth above shall control, unless otherwise agreed to by the holders of at least two-thirds (66-2/3%) in interest of the then outstanding Series A Preferred.

(c) Definition. An "*Event of Non-Compliance*" will occur if, without the waiver, consent or acquiescence of the holders of at least a two-thirds (66-2/3rds%) of the then outstanding shares of Series A Preferred: (i) the Corporation materially breaches any of its representations, warranties, covenants or other agreements in the Series A Preferred Stock Purchase Agreement, dated on or about the date hereof, or any related agreement; (ii) the Corporation fails to make any mandatory redemption as required in Section 8 above, or to pay any dividend with respect to the Series A Preferred as required herein, in each case when due; (iii) there occurs an "*event of default*" (as defined in the applicable agreement evidencing any Material Loan (hereafter defined); provided that if there is no definition of "*event of default*" in such agreement, then an event of default shall mean a material default under such agreement) under any loan agreement where the outstanding balance (principal, interest and costs and fees) exceeds \$50,000 (a "*Material Loan*"), and such default is not timely cured or waived in accordance with the applicable loan documents; or (iv) the Corporation (A) files for bankruptcy, (B) makes an assignment for the benefit of creditors, (C) compromises any Material Loan, or suffers the acceleration of any Material Loan, or (D) takes any other act of insolvency or any action to accomplish or trigger any of the foregoing.

ARTICLE V

The management of the business and the conduct of the affairs of the Corporation will be vested in its Board. The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to the requirements and restrictions which may be set forth in this Certificate. Elections of directors may be, but will not be required to be, by written ballot.

ARTICLE VI

The Board is authorized to (a) adopt, amend and repeal all or any of the Bylaws to the fullest extent permitted by the DGCL as in effect from time to time or any successor statute, (b) authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation, (c) set apart out of any funds of the Corporation available for dividends, a reserve or reserves for any proper purpose and to reduce any such reserve in the manner in which it was created, and (d) adopt from time to time Bylaws provisions with respect to indemnification of directors, officers, employees, agents and other persons as it shall deem expedient and in the best interests of the Corporation and to the extent permitted by law.

The stockholders shall also have the power to adopt, amend or repeal the Bylaws; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate, the affirmative vote of the holders of at

least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class on an as-converted to Common Stock basis, shall be required for any provision of the Bylaws to be adopted, amended or repealed by the stockholders.

ARTICLE VII

The Corporation shall have perpetual existence.

ARTICLE VIII

No director of the Corporation shall have personal liability arising out of an action whether by or in the right of the Corporation or otherwise for monetary damages for breach of fiduciary duty as a director; *provided, however*, that the foregoing shall not limit or eliminate the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or any successor provision, (d) for any transaction from which such director derived an improper personal benefit, or (e) for acts or omissions occurring prior to the date of the effectiveness of this provision.

Furthermore, notwithstanding the foregoing provision, if the DGCL is amended or enacted to permit further limitation or elimination of the personal liability of the director, the personal liability of the Corporation's directors shall be limited or eliminated to the fullest extent permitted by the applicable law.

This provision shall not affect any provision permitted under the DGCL in the certificate of incorporation, bylaws or contract or resolution of the corporation indemnifying or agreeing to indemnify a director against personal liability. Any repeal or modification of this provision shall not adversely affect any limitation hereunder of the personal liability of the director with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE IX

The Corporation shall indemnify and hold harmless any and all of its directors or officers or former directors or officers to the fullest extent from time to time permitted by law with respect to any matter relating to his or her duty as an officer or director of the Corporation. Such indemnification shall not be deemed exclusive or any other rights to which those indemnified may be entitled, under any law, Bylaws, agreement, vote of stockholders, or otherwise. Any repeal or modification of this Article IX shall not adversely affect any right or protection of a director or former director existing under this Article IX with respect to any act or omission occurring prior to such repeal or modification.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate in the manner now or hereafter prescribed by law, and all rights and

powers conferred herein on stockholders, directors and officers are subject to this reserved power.

ARTICLE XI

All provisions relating to any exchange, reclassification or cancellation of issued shares are set forth in this Certificate.

ARTICLE XII

Any shares of Preferred Stock redeemed, purchased or otherwise acquired by the Corporation shall be deemed retired and shall be cancelled and may not under any circumstances thereafter be reissued or otherwise disposed of by the Corporation.


ARTICLE XIII

Notwithstanding the provisions of Section 242 of the DGCL, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation, voting together as a single class on an as-if-converted basis.

FOURTH: The Certificate has been duly approved by the Board.

FIFTH: The Certificate was approved by the holders of the requisite number of shares of the Corporation in accordance with Section 228 of the Delaware General Corporation Law (the "***DGCL***"). The Certificate has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the DGCL by the stockholders of the Corporation.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal this January 26, 2007.



Name: Gregory P. Burnell

Title: President