

FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

AMP'D MOBILE, INC.

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

Amp'd Mobile, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), hereby certifies as follows:

1. That the name of this corporation is Amp'd Mobile, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on December 18, 2003 under the name Amp'd Mobile, Inc.

2. This Fourth Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the certificate of incorporation of the corporation and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

3. The text of the certificate of incorporation of the corporation is hereby amended and restated to read in full as follows:

FIRST: The name of the corporation is Amp'd Mobile, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 40 E. Division Street, Suite A, Dover, Kent County, Delaware 19901. The name of its registered agent at such address is Paracorp Incorporated.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 21,500,000 shares of common stock, \$0.001 par value per share ("Common Stock"), and (ii) 18,000,000 shares of Preferred Stock, \$0.001 par value 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. Unless otherwise indicated, references to "Sections" or "subsections" in this Article refer to sections and subsections of this Article FOURTH.

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, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holder of each share of Common Stock shall be entitled to one vote for each such share as determined on the record date for the vote or consent of stockholders and, for so long as any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock remain outstanding, shall vote together with the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock as a single class upon any items submitted to a vote of stockholders, except as otherwise provided herein or as otherwise required by law; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Corporation's certificate of incorporation (as amended and/or restated from time to time, the "Certificate of Incorporation") that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3. Dividends. Subject to the payment in full of all preferential dividends to which the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock are entitled hereunder, and except as may otherwise be prohibited by law or the terms hereof, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors of the Corporation (the "Board of Directors") may determine in its sole discretion, with holders of outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock (with respect to each security, on an as-converted basis) sharing pari passu in such dividends.

4. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, after the payment or provision for payment of all debts and liabilities of the Corporation and all preferential amounts to which the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock are entitled with respect to the distribution of assets in liquidation, the holders of Common Stock shall be entitled to share ratably in the remaining assets of the Corporation available for distribution, with holders of outstanding shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock,

Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock (with respect to each security, on an as-converted basis) sharing pari passu in such remaining assets as contemplated herein.

B. PREFERRED STOCK

Preferred Stock may be issued from time to time in one or more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, as stated or expressed herein.

C. TERMS OF THE PREFERRED STOCK

1,576,075 shares of the authorized Preferred Stock of the Corporation are hereby designated "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), 1,293,900 shares of the authorized Preferred Stock of the Corporation are hereby designated "Series B Convertible Preferred Stock" (the "Series B Preferred Stock"), 1,472,827 shares of the authorized Preferred Stock of the Corporation are hereby designated the "Series C Convertible Preferred Stock" (the "Series C Preferred Stock"), 181,357 shares of the authorized Preferred Stock of the Corporation are hereby designated the "Series M1-A Convertible Preferred Stock" (the "Series M1-A Preferred Stock"), 725,426 shares of the authorized Preferred Stock of the Corporation are hereby designated the "Series M1-B Convertible Preferred Stock" (the "Series M1-B Preferred Stock"), 6,137,000 shares of the authorized Preferred Stock of the Corporation are hereby designated the "Series D Convertible Preferred Stock" (the "Series D Preferred Stock") and 5,710,000 shares of the authorized Preferred Stock of the Corporation are hereby designated the "Series E Convertible Preferred Stock" (the "Series E Preferred Stock"). The rights, preferences, powers, privileges, restrictions, qualifications and limitations of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be as follows:

1. Dividends. The holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be entitled to receive, with respect to each such share effective from and after the date such share is issued and outstanding, on a pari passu basis, and when, as and if declared by the Board of Directors out of funds legally available therefor, cumulative dividends at the per share rate of eight percent (8.0%) of the Applicable Issue Price (as defined below) per annum accruing daily from and after the date of issuance of each such share, whether or not such dividends are declared by the Board of Directors or paid. If not declared and paid earlier, such dividends shall be paid upon liquidation or redemption as set forth in Sections C.2 and C.6 herein. After the foregoing dividends on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock are paid in full, then the Corporation may (when, as and if declared by the Board of Directors) declare and distribute dividends among the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and the holders of Common Stock pro rata based on

the number of shares of Common Stock held by each, determined on an as-if-converted basis (assuming full conversion of all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock) as of the record date with respect to the declaration of such dividends. Notwithstanding the foregoing, the Corporation may declare and pay dividends consisting solely of shares of Common Stock to the holders of Common Stock without simultaneously declaring or paying such dividend to the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, but subject to the adjustment provisions set forth in Section C.4 herein.

For all purposes of this Certificate of Incorporation, the following terms shall have the following meanings:

(a) “Applicable Issue Price” shall mean (i) in the case of shares of Series A Preferred Stock, the Series A Issue Price; (ii) in the case of shares of Series B Preferred Stock, the Series B Issue Price; (iii) in the case of shares of Series C Preferred Stock, the Series C Issue Price; (iv) in the case of shares of Series M1-A Preferred Stock, the Series M1-A Issue Price; (v) in the case of shares of Series M1-B Preferred Stock, the Series M1-B Issue Price; (vi) in the case of shares of Series D Preferred Stock, the Series D Issue Price; and (vii) in the case of shares of Series E Preferred Stock, the Series E Issue Price.

(b) “Series A Issue Price” shall mean \$10.82 (as proportionately adjusted for stock splits, stock dividends, stock combinations and similar transactions affecting the number of issued and outstanding shares of Series A Preferred Stock).

(c) “Series B Issue Price” shall mean \$10.82 (as proportionately adjusted for stock splits, stock dividends, stock combinations and similar transactions affecting the number of issued and outstanding shares of Series B Preferred Stock).

(d) “Series C Issue Price” shall mean \$19.69 (as proportionately adjusted for stock splits, stock dividends, stock combinations and similar transactions affecting the number of issued and outstanding shares of Series C Preferred Stock).

(e) “Series M1-A Issue Price” shall mean \$27.57 (as proportionately adjusted for stock splits, stock dividends, stock combinations and similar transactions affecting the number of issued and outstanding shares of Series M1-A Preferred Stock).

(f) “Series M1-B Issue Price” shall mean \$27.57 (as proportionately adjusted for stock splits, stock dividends, stock combinations and similar transactions affecting the number of issued and outstanding shares of Series M1-B Preferred Stock).

(g) “Series D Issue Price” shall mean \$26.0576 (as proportionately adjusted for stock splits, stock dividends, stock combinations and similar transactions affecting the number of issued and outstanding shares of Series D Preferred Stock).

(h) "Series E Issue Price" shall mean \$26.3683 (as proportionately adjusted for stock splits, stock dividends, stock combinations and similar transactions affecting the number of issued and outstanding shares of Series E Preferred Stock).

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) Preferential Payments to Holders of Series E Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series E Preferred Stock then outstanding shall be entitled to be paid in cash or other consideration (at the sole option of the holders of Series E Preferred Stock, voting together as a single class), to the extent available, out of the assets available for distribution to the Corporation's stockholders, before any payment shall be made to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Common Stock or any other class or series of stock ranking on liquidation junior to the Series E Preferred Stock by reason of their ownership thereof, in an amount per share equal to the Series E Issue Price, plus any accrued or declared but unpaid dividends on such shares of Series E Preferred Stock (the Series E Issue Price plus such accrued or declared dividends are referred to herein as the "Series E Preference Amount"). If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series E Preferred Stock the full amount of their Series E Preference Amount to which they shall be entitled, the holders of shares of Series E Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the number of shares of Series E Preferred Stock held by each such holder which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Preferential Payments to Holders of Preferred Stock. After the payment of all preferential amounts required to be paid to holders of shares of Series E Preferred Stock under Section C.2(a), the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock then outstanding shall be entitled to be paid in cash or other consideration (at the sole option of the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock, voting together as a single class on an as-converted basis), to the extent available, out of the assets available for distribution to the Corporation's stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock by reason of their ownership thereof, the following respective amounts:

(i) in the case of shares of Series A Preferred Stock, an amount per share equal to the Series A Issue Price, plus any accrued or declared but unpaid dividends on such shares of Series A Preferred Stock (the Series A Issue Price plus such accrued or declared dividends are referred to herein as the "Series A Preference Amount");

(ii) in the case of shares of Series B Preferred Stock, an amount per share equal to the Series B Issue Price, plus any accrued or declared but unpaid dividends on such shares of Series B Preferred Stock (the Series B Issue Price plus such accrued or declared dividends are referred to herein as the "Series B Preference Amount");

(iii) in the case of shares of Series C Preferred Stock, an amount per share equal to the Series C Issue Price, plus any accrued or declared but unpaid dividends on such shares of Series C Preferred Stock (the Series C Issue Price plus such accrued or declared dividends are referred to herein as the "Series C Preference Amount");

(iv) in the case of shares of Series M1-A Preferred Stock, an amount per share equal to the Series M1-A Issue Price, plus any accrued or declared but unpaid dividends on such shares of Series M1-A Preferred Stock (the Series M1-A Issue Price plus such accrued or declared dividends are referred to herein as the "Series M1-A Preference Amount");

(v) in the case of shares of Series M1-B Preferred Stock, an amount per share equal to the Series M1-B Issue Price, plus any accrued or declared but unpaid dividends on such shares of Series M1-B Preferred Stock (the Series M1-B Issue Price plus such accrued or declared dividends are referred to herein as the "Series M1-B Preference Amount"); and

(vi) in the case of shares of Series D Preferred Stock, an amount per share equal to the Series D Issue Price, plus any accrued or declared but unpaid dividends on such shares of Series D Preferred Stock (the Series D Issue Price plus such accrued or declared dividends are referred to herein as the "Series D Preference Amount").

If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock the full amount of their Series A Preference Amount, Series B Preference Amount, Series C Preference Amount, Series M1-A Preference Amount, Series M1-B Preference Amount and Series D Preference Amount, as applicable, to which they shall be entitled, the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective preference amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(c) Distribution of Remaining Assets. After the payment of (i) all preferential amounts required to be paid to holders of shares of Series E Preferred Stock under Section C.2(a) and (ii) all preferential amounts required to be paid to holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock under Section C.2(b), the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Preferred Stock and Common Stock, pro rata based on the number of shares of Common Stock held by each such holder, treating for this purpose all such securities as if they

had been converted to Common Stock in accordance with Section C.4(a) immediately prior to such dissolution, liquidation or winding up of the Corporation.

(d) Deemed Liquidation Events.

(i) The following events shall be deemed to be a liquidation of the Corporation for purposes of this Section C.2 (a "Deemed Liquidation Event"), unless the holders of (X) at least a majority of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, consenting in writing or voting at a meeting (as the case may be) together as a single class on an as-converted basis (a "Series A/B/C/D/E Majority"), (Y) so long as the outstanding shares of Series D Preferred Stock represent at least 15% of the issued and outstanding shares of Common Stock (calculated on a fully-diluted, as converted basis), at least a majority of the outstanding shares of Series D Preferred Stock (a "Series D Majority") and (Z) at least a majority of the outstanding shares of Series E Preferred Stock (a "Series E Majority"), elect otherwise by written notice given to the Corporation prior to the effective date of any such event; provided, however, that any such election may only be effective as to all, but not fewer than all, series of Preferred Stock; provided, further, that if at any time there are at least 181,357 shares of Series M1-A Preferred Stock and 725,530 shares of Series M1-B Preferred Stock outstanding (such numbers of shares to be appropriately adjusted in the event of any stock split or stock dividend that changes the number of outstanding shares of Series M1-A Preferred Stock or Series M1-B Preferred Stock, as applicable), then the written consent or affirmative vote required under clause (X) above of this subsection 2(c)(i) shall be that of the holders of a majority of the then outstanding shares of Preferred Stock, consenting in writing or voting at a meeting (as the case may be) together as a single class on an as-converted basis (a "Preferred Majority");

(A) a merger or consolidation in which

(I) the Corporation is a constituent party, or

(II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock of another entity which represent, immediately following such merger or consolidation at least a majority, by voting power, of the capital stock of (1) the surviving corporation or entity or (2) if the surviving corporation or entity is a wholly owned subsidiary of another entity immediately following such merger or consolidation, the parent entity of such surviving corporation or entity; provided that, for the purpose of this Section C.2(d)(i), all shares of Common Stock issuable upon exercise of Options (as defined in Section C.4(d)(i)(A)) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined in Section C.4(d)(C)) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or

consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as outstanding shares of Common Stock are converted or exchanged;

(B) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries, taken as a whole, except where such sale, lease, transfer or other disposition is to a wholly owned subsidiary of the Corporation; or

(C) a transaction or series of related transactions in which a person or a group of persons (as defined in Rule 13d-5(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) acquires beneficial ownership (as determined in accordance with Rule 13d-3 under the Exchange Act) of a majority of the voting power of the voting securities of the Corporation.

(ii) The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event pursuant to Section C.2(d)(i)(A)(I) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections C.2(a), C.2(b) and C.2(c) above.

(iii) If there is a Deemed Liquidation Event pursuant to Sections C.2(d)(i)(A)(II) or (B) above and if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 60 days after such Deemed Liquidation Event, then (A) the Corporation shall deliver a written notice to each holder of Preferred Stock no later than the 60th day after the Deemed Liquidation Event advising the holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of the Preferred Stock, and (B) if the holders of at least 66-2/3% in interest of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, consenting in writing or voting at a meeting (as the case may be) together as a single class, so request redemption in a written instrument delivered to the Corporation not later than 15 days after receipt of notice from the Corporation described in clause (A) above, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation (the "Net Proceeds")) to (x) redeem, to the extent legally available therefor, on the 90th day after such Deemed Liquidation Event, (I) first, all outstanding shares of Series E Preferred Stock at a price per share equal to the Series E Preference Amount, and (II) second, to the extent available, all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock on a pari passu basis at a price per share equal to the Series A Preference Amount, the Series B Preference Amount, the Series C Preference Amount, the Series M1-A Preference Amount, the Series M1-B Preference Amount and the Series D Preference Amount, as applicable, and (y) after payment of the redemption amounts required to be paid under clause (x) above, to distribute the remaining Net Proceeds among the holders of the shares of Preferred Stock and Common Stock, pro rata based on the number of shares of Common Stock held by each such holder, treating for this purpose all such securities as if they had been converted to

Common Stock in accordance with Section C.4(a) immediately prior to such Deemed Liquidation Event. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall first use any funds legally available to redeem the maximum possible number of shares of Series E Preferred Stock from the holders of such shares in proportion to the respective number of such shares that otherwise would have been redeemed if all such shares of Series E Preferred Stock had been redeemed in full, and second, shall use any funds legally available to redeem the maximum possible number of such other shares of Preferred Stock from the holders of such remaining shares to be redeemed in proportion to the respective number of such shares that otherwise would have been redeemed if all such shares of Preferred Stock had been redeemed in full. The Corporation shall redeem the remaining shares of Preferred Stock that were required to have been redeemed as soon as practicable after the Corporation has funds legally available therefor (in accordance with the allocations set forth in this Section C.2(d)(iii)). The provisions of Sections C.6(b) through (e) below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this Section C.2(d)(iii). Prior to the distribution or redemption provided for in this Section C.2(d)(iii), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in the ordinary course of business.

(iv) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. If the amount deemed paid or distributed under this Section C.2(d) is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(A) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the 30-day period ending three days prior to the closing of such transaction;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing of such transaction; or

(C) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

3. Voting.

(a) General. On any amendment, consent, waiver or other matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series

M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be entitled to cast a number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, as the case may be, held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as expressly set forth otherwise, on any amendment, consent, waiver or other matter presented to the holders of one or more series of Preferred Stock (with or without holders of other series or Preferred Stock or of Common Stock) for their action or consideration at any meeting of any stockholders of the Corporation (or by written consent of such stockholders in lieu of meeting), each holder of Preferred Stock entitled to vote on such matter shall be entitled to cast a number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by this Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(b) Board Composition. The holders of record of the outstanding shares of Series A Preferred Stock, exclusively and voting together as a single class, shall be entitled to elect three (3) directors of the Corporation (the "Series A Directors"). The holders of record of the outstanding shares of Series C Preferred Stock, exclusively and voting together as a single class, shall be entitled to elect one (1) director of the Corporation (the "Series C Director"). The holders of record of the outstanding shares of Series M1-A Preferred Stock and Series M1-B Preferred Stock, exclusively and voting together as a single class, shall be entitled to elect one (1) director of the Corporation (the "Series M1 Director"). As provided in that certain Third Amended and Restated Stockholders Voting Agreement, dated as of February 15, 2007, by and among the Company and the other parties thereto, (i) one (1) director of the Corporation shall be designated by certain holder(s) of the Series D Preferred Stock (the "Series D Director") and (ii) one (1) director of the Corporation shall be designated by certain holder(s) of the Series E Preferred Stock (the "Series E Director", and together with the Series A Directors, the Series C Director and the Series D Director, the "Preferred Directors"). In addition, the holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect three (3) directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the classes or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any classes or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such classes or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section C.3(b).

(c) At any time when shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E 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 Certificate of Incorporation, and in addition to any other vote required by law or this Certificate of Incorporation, without the written

consent or affirmative vote of (x) a Series A/B/C/D/E Majority, (y) so long as the outstanding shares of Series D Preferred Stock represent at least 15% of the issued and outstanding shares of Common Stock (calculated on a fully-diluted, as converted basis), a Series D Majority and (z) a Series E Majority (provided, however, that if at any time that there have been at least 181,357 shares of Series M1-A Preferred Stock and 725,530 shares of Series M1-B Preferred Stock outstanding (such numbers of shares to be appropriately adjusted in the event of any stock split or stock dividend that changes the number of outstanding shares of Series M1-A Preferred Stock or Series M1-B Preferred Stock, as applicable), then the written consent or affirmative vote required under clause (x) above of this subsection 3(c) shall be that of a Preferred Majority), the Corporation shall not, either directly or indirectly, by amendment, merger, consolidation or otherwise:

(i) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing;

(ii) amend, alter or repeal any provision of the Certificate of Incorporation or bylaws of the Corporation;

(iii) (A) create, authorize or issue (by reclassification or otherwise) any additional equity securities unless the same ranks junior to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, (B) increase the authorized number of shares of Preferred Stock, or (C) create, authorize or issue any obligation or security convertible into equity securities unless such equity securities rank junior to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(iv) purchase or redeem, pay or declare any dividend or make any distribution on, any shares of stock other than the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock in accordance with this Certificate of Incorporation, or permit any subsidiary of the Corporation to take any such action, except for (A) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (B) repurchases of securities from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof;

(v) make, or permit any subsidiary to make, any change in the nature of its business or any material change in the business plan, each as of the date hereof;

(vi) increase the number of shares of Common Stock issued or reserved for issuance to employees, consultants or directors pursuant to stock option, stock grant, stock

purchase or similar plans or arrangements to an amount in excess of 2,467,924 (the "Reserved Employee Shares");

(vii) take any other action not otherwise described in this Section C.3(c) if such action could adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock; or

(viii) take any action to change the size of the Corporation's board of directors to any number other than ten (10) directors.

(d) At any time when shares of Series M1-A Preferred Stock or Series M1-B Preferred Stock are outstanding, in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of the holders of a majority in interest of the then outstanding shares of Series M1-A Preferred Stock or Series M1-B Preferred Stock, as applicable, consenting in writing or voting at a meeting (as the case may be), together as a single class, the Corporation shall not amend the Certificate of Incorporation if such amendment would alter or change the powers, preferences, or special rights of the Series M1-A Preferred Stock or the Series M1-B Preferred Stock so as to affect them adversely, but shall not so affect the other series of Preferred Stock proportionately. For avoidance of doubt, if any such amendment affects all the series of Preferred Stock proportionately, holders of Series M1-A Preferred Stock and Series M1-B Preferred Stock shall not be entitled to any separate vote hereunder.

4. Optional Conversion. Holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall have conversion rights as follows (collectively, the "Conversion Rights"):

(a) Right to Convert.

(i) Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" shall initially (as of the date hereof) be equal to \$10.82. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below in Sections C.4(d)-(j), as applicable.

(ii) Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B Issue Price by the Series B Conversion Price (as defined below) in effect at the time of conversion. The "Series B

Conversion Price” shall initially (as of the date hereof) be equal to \$10.82. Such initial Series B Conversion Price, and the rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below in Sections C.4(d)-(j), as applicable.

(iii) Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series C Issue Price by the Series C Conversion Price (as defined below) in effect at the time of conversion. The “Series C Conversion Price” shall initially (as of the date hereof) be equal to \$19.69. Such initial Series C Conversion Price, and the rate at which shares of Series C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below in Sections C.4(d)-(j), as applicable.

(iv) Each share of Series M1-A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series M1-A Issue Price by the Series M1-A Conversion Price (as defined below) in effect at the time of conversion. The “Series M1-A Conversion Price” shall initially (as of the date hereof) be equal to \$24.5318. Such initial Series M1-A Conversion Price, and the rate at which shares of Series M1-A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below in Sections C.4(d)-(j), as applicable.

(v) Each share of Series M1-B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series M1-B Issue Price by the Series M1-B Conversion Price (as defined below) in effect at the time of conversion. The “Series M1-B Conversion Price” shall initially (as of the date hereof) be equal to \$27.1226. Such initial Series M1-B Conversion Price, and the rate at which shares of Series M1-B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below in Sections C.4(d)-(j), as applicable.

(vi) Each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series D Issue Price by the Series D Conversion Price (as defined below) in effect at the time of conversion. The “Series D Conversion Price” shall initially (as of the date hereof) be equal to \$24.5318. Such initial Series D Conversion Price, and the rate at which shares of Series D Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below in Sections C.4(d)-(j), as applicable.

(vii) Each share of Series E Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of

additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series E Issue Price by the Series E Conversion Price (as defined below) in effect at the time of conversion. The "Series E Conversion Price" shall initially be equal to the Series E Issue Price. Such initial Series E Conversion Price, and the rate at which shares of Series E Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below in Sections C.4(d)-(k), as applicable.

(viii) In the event of a notice of redemption of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock or Series E Preferred Stock pursuant to Section C.6 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full.

(ix) The Series A Conversion Price, the Series B Conversion Price, the Series C Conversion Price, the Series M1-A Conversion Price, the Series M1-B Conversion Price, the Series D Conversion Price and the Series E Conversion Price are each sometimes referred to herein as the "Applicable Conversion Price," as the context requires.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which a holder of Preferred Stock would otherwise be entitled, the Corporation shall pay cash in an amount equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon any such conversion shall be determined on the basis of the total number of shares of Preferred Stock a holder is then converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall 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. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in

writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such office to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when any share of Preferred Stock is outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock is not sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation. Before taking any action which would cause an adjustment reducing an Applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Applicable Conversion Price.

(iii) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of such series, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(iv) Upon any such voluntary conversion, no adjustment to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series M1-A Conversion Price, Series M1-B Conversion Price, Series D Conversion Price or Series E Conversion Price shall be made for any accrued and/or declared but unpaid dividends on any of the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion; provided, however, that such conversion shall not affect the holder's right to receive payment of declared but unpaid dividends.

(v) The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section C.4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance 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 or that no such tax is due.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Certificate of Incorporation, the following definitions shall apply:

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

(B) "Series A Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock was issued; "Series M1-B Original Issue Date" shall mean the date on which the first share of Series M1-B Preferred Stock was issued; and "Series E Original Issue Date" shall mean the date on which the first share of Series E Preferred Stock was issued.

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

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued or, pursuant to Section C.4(d)(iii) below, deemed to be issued by the Corporation after the Series E Original Issue Date, other than the following ("Exempted Securities"):

(I) shares of Common Stock issued or deemed issued as a dividend, stock split, split-up or other distribution on shares of Common Stock that are adjusted pursuant to Sections C.4(e) or 4(f) below;

(II) shares of Common Stock issued or deemed issued from, but not in excess of, the duly authorized pool of Reserved Employee Shares;

(III) (a) shares of Series M1-A Preferred Stock and Series M1-B Preferred Stock issued pursuant to and in accordance with the terms of that certain Preferred Stock Purchase Agreement, dated as of November 11, 2005, by and between the Company and MTV Networks ("MTVN"), a division of Viacom International Inc., a Delaware corporation (the "MTVN Purchase Agreement"), (b) shares of Series D Preferred Stock issued pursuant to and in accordance with the terms of that certain Amended and Restated Stock Purchase

Agreement, dated as of April 11, 2006, by and between the Corporation and Vivendi Universal, S.A., (c) shares of Series D Preferred Stock issued pursuant to and in accordance with the terms of that certain Letter Agreement, dated as of April 11, 2006, by and between the Corporation and Best Buy Stores, L.P., (d) shares of Series E Preferred Stock issued pursuant to and in accordance with the terms of that certain Preferred Stock Purchase Agreement, dated as of February 15, 2007, by and among the Corporation and the purchasers named therein (the "Series E Purchase Agreement"), (e) shares of Series E Preferred Stock issued pursuant to and in accordance with the terms of that certain Convertible Promissory Note, dated as of January 8, 2007, by the Corporation to Vivendi, S.A., (f) up to 5,000 shares of common stock issued to David Altshuler pursuant to exercise of a warrant, (g) shares of common stock issued to Danny Sheridan Sports, Inc. pursuant to and in accordance with that certain Warrant, dated as of September 12, 2005, by the Corporation to Danny Sheridan Sports, Inc., (h) shares of common stock issued to The William Morris Agency, Inc. pursuant to and in accordance with that certain Advisory Services Agreement, dated as of August 1, 2004, between the Corporation and The William Morris Agency, Inc., and (i) any additional shares of Common Stock that are deemed to be issued as a result of an adjustment to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series M1-A Conversion Price, Series M1-B Conversion Price, Series D Conversion Price and/or Series E Conversion Price, as applicable; or

(IV) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security.

(ii) No Adjustment of Conversion Price. No adjustment shall be made to the Applicable Conversion Price as the result of the issuance of Additional Shares of Common Stock as follows: (A) no adjustment shall be made to the Series A Conversion Price if the consideration per share (determined pursuant to Section C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation) is equal to or greater than the Series A Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; (B) no adjustment shall be made to the Series B Conversion Price if the consideration per share (determined pursuant to Section C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation) is equal to or greater than the Series B Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; (C) no adjustment shall be made to the Series C Conversion Price if the consideration per share (determined pursuant to Section C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation) is equal to or greater than the Series C Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; (D) no adjustment shall be made to the Series M1-A Conversion Price if the consideration per share (determined pursuant to Section C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation) is equal to or greater than the Series

M1-A Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; (E) no adjustment shall be made to the Series M1-B Conversion Price if the consideration per share (determined pursuant to Section C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation) is equal to or greater than the Series M1-B Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; (F) no adjustment shall be made to the Series D Conversion Price if the consideration per share (determined pursuant to Section C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation) is equal to or greater than the Series D Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; (G) no adjustment shall be made to the Series E Conversion Price if the consideration per share (determined pursuant to Section C.4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation) is equal to or greater than the Series E Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock; (H) no adjustment shall be made to the Series E Conversion Price under this Section C.4(d) with respect to the issuance of Additional Shares of Common Stock for which appropriate adjustments are made to such conversion prices under Section C.4(k) hereof; and (I) no adjustment shall be made to the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series M1-A Conversion Price, Series M1-B Conversion Price, Series D Conversion Price or Series E Conversion Price if prior to the date of issue (or deemed issue) of the Additional Shares of Common Stock, the Corporation receives written notice from (i) a Preferred Majority, (ii) so long as the outstanding shares of Series D Preferred Stock represent at least 15% of the issued and outstanding shares of Common Stock (calculated on a fully-diluted, as converted basis), a Series D Majority and (iii) a Series E Majority instructing that no adjustment be made to the Applicable Conversion Price of each such security as a result of such issuance (or deemed issuance) of Additional Shares of Common Stock; provided, however, that if but for the foregoing, an adjustment would be made to the conversion price of any of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock under the terms hereof but would not otherwise be made to the conversion price of any other series of Preferred Stock, then the appropriate adjustment to the conversion price of such series of Preferred Stock shall be made unless the Corporation receives written notice from the holders of a majority in interest of such affected series of Preferred Stock, voting together as a single class, instructing that no adjustment be made to the Applicable Conversion Price of such affected series of Preferred Stock as a result of such issuance (or deemed issuance) of additional shares of Common Stock. No adjustment shall be made to any Applicable Conversion Price as a result of the issuance of any share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock or Series E Preferred Stock solely in connection with an adjustment to any Applicable Conversion Price.

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

(A) If the Corporation at any time or from time to time after the Series E Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities) or shall fix a record date for the

determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to an Applicable Conversion Price, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, in either case, effective upon such increase or decrease becoming effective, the Applicable Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Applicable Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing an Applicable Conversion Price to an amount which exceeds the lower of (i) the Applicable Conversion Price on the original adjustment date, or (ii) the Applicable Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities), the issuance of which did not result in an adjustment to an Applicable Conversion Price pursuant to the terms of Section C.4(d)(iv) below (either because the consideration per share of the Additional Shares of Common Stock subject thereto was equal to or greater than an Applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series A Original Issue Date), are revised after the Series E Original Issue Date (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) an increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) a decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto, shall be deemed to have been issued effective upon such increase or decrease becoming effective for purposes of Section C.4(d)(iv) herein.

(iv) Adjustment of Applicable Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall (A) at any time after the Series E Original Issue Date, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.4(d)(iii)), without

consideration or for a consideration per share less than the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and/or Series E Conversion Price, as applicable, in effect immediately prior to such issuance, then the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and/or Series E Conversion Price, as applicable, shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + RES + B) \div (A + RES + C);$$

or (B) at any time after February 28, 2006, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.4(d)(iii)), without consideration or for a consideration per share less than the Series M1-A Conversion Price in effect immediately prior to such issuance, then the Series M1-A Conversion Price shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + RES + B) \div (A + RES + C);$$

or (C) at any time after the Series M1-B Original Issue Date, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.4(d)(iii)), without consideration or for a consideration per share less than the Series M1-B Conversion Price in effect immediately prior to such issuance, then the Series M1-B Conversion Price shall be reduced, concurrently with such issuance, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + RES + B) \div (A + RES + C)$$

For purposes of the foregoing formulae, the following definitions shall apply:

(I) “CP₂” shall mean, with respect to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, the Applicable Conversion Price in effect with respect to such security immediately after such issuance of Additional Shares of Common Stock;

(II) “CP₁” shall mean, with respect to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, the Applicable Conversion Price in effect with respect to such security immediately prior to such issuance of Additional Shares of Common Stock;

(III) “A” shall mean the number of shares of Common Stock issued and outstanding, including any shares of Common Stock issuable upon (i) conversion of any shares of Series A Preferred Stock, Series B

Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock or Series E Preferred Stock issued and outstanding, (ii) conversion of any Convertible Security issued and outstanding and (iii) exercise of any Options issued and outstanding, in each case immediately prior to such issuance of Additional Shares of Common Stock, subject to the further provisions set forth in this Section C.4;

(IV) "B" shall mean the number of shares of Common Stock that would have been issued in the issuance if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of the issuance of such Additional Shares of Common Stock by CP_1);

(V) "C" shall mean the number of Additional Shares of Common Stock; and

(VI) "RES" means the number of shares of Common Stock underlying Options that have not yet been granted, immediately prior to such issuance of Additional Shares of Common Stock.

(v) Determination of Consideration. For purposes of this Section C.4(d), the consideration received by the Corporation for the issuance of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

- (I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and
- (III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been

issued pursuant to Section C.4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

- (I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
- (II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Applicable Conversion Price pursuant to the terms of Section C.4(d)(iv) above, and such issuance dates occur within a period of no more than 60 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without additional giving effect to any adjustments as a result of any subsequent issuances within such period).

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series E Original Issue Date effect a subdivision of the outstanding Common Stock without a comparable subdivision of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock, or combine the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock without a comparable combination of the Common Stock, then each Applicable Conversion Price (with respect to each such security for which no comparable change is made) in effect immediately before that subdivision or combination shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series

M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock, as applicable, shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding or to such decrease in the number of outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock, as applicable. If the Corporation shall at any time or from time to time after the Series E Original Issue Date combine the outstanding shares of Common Stock without a comparable combination of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock or effect a subdivision of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock without a comparable subdivision of the Common Stock, then the Applicable Conversion Price (with respect to each such security for which no comparable change is made) in effect immediately before the combination or subdivision shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock, as applicable, shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding or increase in the number of outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock, as applicable. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series E Original Issue Date 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 on the Common Stock in additional shares of Common Stock, then and in each such case the Applicable Conversion Price in effect immediately before such event 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 each Applicable Conversion Price then in effect by a fraction:

(1) 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

(2) 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, that 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, then each Applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each Applicable Conversion Price shall be adjusted pursuant to this subsection as

of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made to the Applicable Conversion Price with respect to a series of Preferred Stock if the holders of shares of that series of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to what they would have received with respect to shares of Common Stock if all outstanding shares of that series of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series E Original Issue Date shall make or issue, or fix a record date for the determination of holders of capital stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section C.4(f) do not apply to such dividend or distribution, then and in each such event the holders of shares of Preferred Stock then issued and outstanding shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received with respect to shares of Common Stock if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section C.2(d), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections C.4(e), (f) or (g)), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each outstanding share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall thereafter be convertible, in lieu of the respective number of shares of Common Stock into which each of those shares was convertible prior to such event, into the kind and amount of securities, cash or other property which a holder of the respective number of shares of Common Stock of the Corporation issuable upon conversion of each of those shares immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section C.4 with respect to the rights and interests thereafter of the holders of any Preferred Stock, to the end that the provisions set forth in this Section C.4 (including provisions with respect to changes in and other adjustments of the Applicable Conversion Prices) shall thereafter be applicable, as nearly as possible, in relation to any securities or other property thereafter deliverable upon the conversion of any Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment to any Applicable Conversion Price pursuant to this Section C.4, the Corporation at

its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of any affected series of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the affected series of Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than 10 days thereafter), furnish to such holder a certificate setting forth (i) the Applicable Conversion Price then in effect with respect to the series of Preferred Stock that is the subject of the request, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of that series of Preferred Stock.

(j) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of any of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation shall send to all holders of Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, Deemed Liquidation Event, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of any of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, Deemed Liquidation Event, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to each series of the Preferred Stock and the Common Stock. Such notice shall be sent at least 20 days prior to the record date or effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder Preferred Stock shall be deemed sent to such holder if deposited in the United States mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

(k) Special Adjustments to Series E Conversion Price.

(i) In the event the Corporation, at any time after the Series E Original Issue Date but on or before December 31, 2007 (the "Series E Outside Date"), shall issue or be

deemed pursuant to Section C.4(d)(iii) to issue Additional Shares of Common Stock for an aggregate consideration in excess of \$2,500,000 and for consideration per share (determined in accordance with C.4(d)(v)) less than the then-applicable Series E Conversion Price (the "Series E Special Adjustment Trigger"), then the Series E Conversion Price shall be reduced, concurrently with such issuance, to the price equal to the consideration per share (determined as described above) received by the Corporation for such issuance or deemed issuance of Additional Shares of Common Stock (the "Series E Special Adjustment Price"); provided, that if the Corporation completes a Bona Fide Equity Round (as defined below) for consideration per share at least equal to the then-applicable Series E Conversion Price, this Section C.4(k) shall terminate and no adjustment shall be made to the Series E Conversion Price pursuant to this Section C.4(k); provided further, that if the Corporation completes a Bona Fide Equity Round for a price per share below the then-applicable Series E Conversion Price, this Section C.4(k) shall apply to such issuance but this Section C.4(k) shall thereafter terminate and no further adjustment shall be made to the Series E Conversion Price pursuant to this Section C.4(k). For purposes of this Section, a "Bona Fide Equity Round" shall be any issuance by the Corporation of Common Stock, Convertible Securities or Options for cash (x) involving the issuance or deemed issuance of Additional Shares of Common Stock in an aggregate amount equal to at least \$50 million in which the percentage of funding from any party purchasing such securities who is not, prior to the issuance of such Common Stock, Convertible Securities or Options, a stockholder of the Corporation (or an affiliate of such stockholder) is at least equal to the percentage calculated by dividing (A) the aggregate number of shares of Series E Preferred Stock issued to any person that is not then a stockholder of the Corporation (or an affiliate of such stockholder) prior to the Initial Closing (as defined in the Series E Purchase Agreement) in connection with the Initial Closing and any Additional Closings (as defined in the Series E Purchase Agreement), by (B) the aggregate number of shares of Series E Preferred Stock issued in connection with the Initial Closing and any Additional Closings and (y) the proceeds of which are used to fund operating expenses and capital expenditures, to pay transaction expenses and for other general corporate purposes and are not used, directly or indirectly, to repurchase or redeem any of the Company's capital stock or for acquisitions. In calculating the amount, if any, by which the Series E Conversion Price is reduced hereunder, there shall be taken into account any Additional Shares of Common Stock issued or deemed to be issued that are sold on substantially similar terms (not including price) to substantially similar investors in connection with a single plan of financing or a series of related financings. Notwithstanding the foregoing, a "Bona Fide Equity Round" shall not include any issuance or deemed issuance of Additional Shares of Common Stock pursuant to the Series E Purchase Agreement.

(ii) If an adjustment to the Series E Conversion Price is made under this Section C.4(k) in the manner described above, then any prior adjustments that have been made to the Series E Conversion Price, as applicable, shall be re-calculated in sequential order *after* having given effect to the adjustment made pursuant to this Section C.4(k).

5. Automatic Conversion.

(a) Upon (i) the closing of the sale of shares of Common Stock to the public at a price per share (appropriately adjusted for stock splits, reverse stock splits, stock dividends and the like) equal to at least three (3) times the Series E Issue Price in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities

Act of 1933, as amended, resulting in at least \$125,000,000 of gross proceeds to the Corporation (a "Qualified Public Offering") or (ii) the written consent or affirmative vote of (x) a Series A/B/C/D/E Majority, (y) so long as the outstanding shares of Series D Preferred Stock represent at least 15% of the issued and outstanding shares of Common Stock (calculated on a fully-diluted, as converted basis), a Series D Majority and (z) a Series E Majority (provided, however, that if at any time that there have been at least 181,357 shares of Series M1-A Preferred Stock and 725,530 shares of Series M1-B Preferred Stock outstanding (such numbers of shares to be appropriately adjusted in the event of any stock split or stock dividend that changes the number of outstanding shares of Series M1-A Preferred Stock or Series M1-B Preferred Stock, as applicable), then the written consent or affirmative vote required under clause (x) above of this subsection 5(a) shall be that of a Preferred Majority) (the date of that closing or consent or vote, the "Mandatory Conversion Date"), (I) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock at their respective Applicable Conversion Prices in effect as of the date of the Mandatory Conversion Date and (II) none of such shares of Preferred Stock may be reissued by the Corporation as shares of any such series of Preferred Stock.

(b) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section C.5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, or given by electronic communication in compliance with the provisions of the General Corporation Law, to each record holder of Preferred Stock. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section C.5. On the Mandatory Conversion Date, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to each holder thereof, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Section C.4(b) in respect of any fraction of a share of Common Stock that would otherwise have been issuable upon such conversion.

(c) Intentionally Omitted.

(d) Special Mandatory Conversion -- Qualified Financings.

(i) In the event that any holder of then outstanding Preferred Stock does not participate in a Qualified Financing (as defined below) by purchasing in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (provided, that the Corporation has given such holder at least ten (10) business days written notice of the Qualified Financing), such holder's Pro Rata Amount (as defined below) for cash or other consideration set forth in the purchase agreement relating thereto (provided, that pursuant to and in all respects subject to Section 1.02(c) of the MTVN Purchase Agreement, MTVN shall, under the circumstances set forth in Section 1.02(c) of the MTVN Purchase Agreement, have, with respect to any such Qualified Financing and on or before the closing date of such Qualified Financing, the right to participate in such Qualified Financing by purchasing the securities issued thereunder by having contributed media advertising placement services pursuant to the License Agreement (as defined in the MTVN Purchase Agreement)), then that number of Non-Participating Shares (as defined below) of Preferred Stock held by such holder shall automatically, on a pro rata basis and without any further action on the part of such holder, be converted into shares of Common Stock at the Applicable Conversion Price with respect to such shares of Preferred Stock in effect immediately prior to the consummation of such Qualified Financing, effective upon the consummation of the Qualified Financing (a "Special Mandatory Conversion"). For purposes of determining the number of shares of Preferred Stock owned by any holder of Preferred Stock, and for determining the number of Offered Securities (as defined below) that such holder has purchased in a Qualified Financing, all shares of Preferred Stock held by Affiliates of such holder shall be aggregated with such holder's shares, and all Offered Securities purchased by Affiliates of such holder shall be aggregated with the Offered Securities purchased by such holder (provided, that no shares or securities shall be attributed to more than one Person within any such group of affiliated entities or persons). Upon such Special Mandatory Conversion, any shares of Preferred Stock so converted shall be cancelled and not subject to reissuance.

(ii) Upon a Special Mandatory Conversion, each holder of shares of Preferred Stock converted pursuant to Section C.5(d)(i) shall surrender its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to Section C.5(d)(i). All rights with respect to the Preferred Stock converted pursuant to Section C.5(d)(i), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holder thereof, upon surrender of its certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by its attorney duly authorized in writing. As soon as practicable after the Special Mandatory Conversion pursuant hereto and the surrender of the certificate or certificates for Preferred Stock so converted, the Corporation shall cause to be issued and delivered to such holder, or on its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, and cash as provided in Section C.4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(iii) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the time of the Special Mandatory Conversion, be deemed to have been retired and cancelled, and the shares of Preferred Stock converted pursuant to Section C.5(d)(i) represented thereby shall, from and after the time of the Special Mandatory Conversion, be deemed to have been converted into Common Stock for all purposes, notwithstanding the failure of the holder thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock, as applicable.

(iv) For purposes of this Section C.5, the following definitions shall apply:

(A) "Affiliate" shall mean, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, (I) any entity of which such Person is a partner or member, any partner, officer, director, member or employee of such Person and any venture capital fund now or hereafter existing of which such Person is a partner or member which is controlled by or under common control with one or more general partners of such Person or shares the same management company with such Person, (II) with respect to any of the Tudor Entities, any entities for which any of the Tudor Entities or any of its Affiliates serve as general partner and/or investment adviser or in a similar capacity, and all mutual funds or other pooled investment vehicles or entities under the control or management of any of the Tudor Entities or the general partner or investment adviser thereof, or any Affiliate of any of them, and (III) with respect to any of the Old Lane Entities, any fund or entity now or hereafter existing which is managed or advised by the same general partner or investment adviser or by an entity controlling, controlled by, or under common control with such general partner or investment adviser as any of the Old Lane Entities.

(B) "Affiliated Group" has the meaning given to it in Section 1504 of the Internal Revenue Code of 1986, as amended, and in addition includes any analogous combined, consolidated, or unitary group, as defined under any applicable state, local, or foreign income Tax law.

(C) "Non-Participating Shares" shall mean that number of shares of Preferred Stock held by the applicable holder of shares of Preferred Stock multiplied by a fraction, the numerator of which is such holder's Pro Rata Amount less the number of Offered Securities purchased by such holder in the applicable Qualified Financing, and the denominator of which is such holder's Pro Rata Amount.

(D) "Offered Securities" shall mean the equity securities of the Corporation set aside by the Board of Directors for purchase in connection with a Qualified Financing; provided, that for purposes of the issuances contemplated by the Series E Purchase Agreement, the number of Offered Securities deemed to be set aside by the Board of Directors

for purchase in connection with the Series E Purchase Agreement shall be 4,945,007 shares of Series E Preferred Stock.

(E) “Old Lane Entities” means each of the following: Old Lane, LP, Old Lane US Master Fund, LP, Old Lane Cayman Master Fund, LP, Old Lane HMA Master Fund, LP and their respective Affiliates.

(F) “Pro Rata Amount” shall mean the lesser of (a) that number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the total number of shares of Common Stock held by a holder of Preferred Stock (calculated on an as-if-converted or as-if-exercised basis with respect to any Option or Convertible Securities then held by such holder), and the denominator of which is equal to the total number of shares of Common Stock then issued and outstanding (calculated on an as-if-converted or as-if-exercised basis with respect to all Options and Convertible Securities then issued and outstanding), and (b) the maximum number of Offered Securities that such holder is permitted by the Corporation to purchase in such Qualified Financing, after giving effect to any cutbacks or limitations established by the Board of Directors and applied on a pro rata basis to all holders of Preferred Stock; *provided*, that to the extent the issuance or sale of Series E Preferred Stock in accordance with the Series E Purchase Agreement is deemed a Qualified Financing, the Pro Rata Number shall be calculated without giving effect to any shares of Common Stock issuable upon conversion of any shares of Series E Preferred Stock held by any holder of Preferred Stock.

(G) “Qualified Financing” shall mean any transaction (or series of related transactions) involving the issuance or sale of equity securities of the Corporation after the Series A Original Issue Date for cash consideration which would result in an adjustment to the Applicable Conversion Price of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock or Series E Preferred Stock pursuant to the terms of Section C.4(d)(iv) hereof, unless a Preferred Majority (before giving effect to such proposed Qualified Financing) elects otherwise by written notice given to the Corporation at least five (5) days prior to the consummation of the Qualified Financing (or such shorter period as shall be acceptable to the Board of Directors); *provided*, that any issuance or sale of equity securities of the Corporation after the Final Closing time (as defined in the Series E Purchase Agreement) for cash consideration which would result in an adjustment only to the then-applicable Series M1-B Conversion Price pursuant to the terms of Section C.4(d)(iv) hereof but not to any other series of Preferred Stock shall not constitute a Qualified Financing. For the avoidance of doubt, the Company’s issuance of any Exempted Securities shall not constitute a Qualified Financing.

(H) “Tax” means any federal, state, local, or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, value added, excise, stamp, occupation, premium, windfall profit, customs, duties, real property, personal property, intangibles, social security, unemployment, disability, payroll, employee, or other tax or levy, of any kind whatsoever, including any interest, penalties, or additions to tax in respect of the foregoing.

(l) “Tudor Entities” means each of the following: Tudor Ventures II, L.P., The Tudor BVI Global Portfolio Ltd., Tudor Proprietary Trading, L.L.C., Raptor Global Portfolio, Ltd. and Altar Rock Fund, L.P., or any funds or other investment vehicles or entities of which any of the foregoing entities are Affiliates, or any Affiliate or Affiliated Group of Tudor Investment Corporation.

(e) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date or the effective date of the Special Mandatory Conversion, as applicable, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder thereof to surrender such certificates on or prior to such date. None of the converted Preferred Stock may be reissued as shares of the same or any other series of Preferred Stock, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as shall be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption.

(a) Redemption. Shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor, first for each share of Series E Preferred Stock, at a price per share equal to the Series E Issue Price, plus all accrued and/or declared but unpaid dividends thereon (the “Series E Redemption Price”), and second, at a price equal to (i) for each share of Series A Preferred Stock, the Series A Issue Price, plus all accrued and/or declared but unpaid dividends thereon (the “Series A Redemption Price”), (ii) for each share of Series B Preferred Stock, the Series B Issue Price per share, plus all accrued and/or declared but unpaid dividends thereon (the “Series B Redemption Price”), (iii) for each share of Series C Preferred Stock, the Series C Issue Price, plus all accrued and/or declared but unpaid dividends thereon (the “Series C Redemption Price”), (iv) for each share of Series M1-A Preferred Stock, the Series M1-A Issue Price per share, plus all accrued and/or declared but unpaid dividends thereon (the “Series M1-A Redemption Price”), (v) for each share of Series M1-B Preferred Stock, the Series M1-B Issue Price per share, plus all accrued and/or declared but unpaid dividends thereon (the “Series M1-B Redemption Price”), (vi) for each share of Series D Preferred Stock, the Series D Issue Price, plus all accrued and/or declared but unpaid dividends thereon (the “Series D Redemption Price”), and together with the Series A Redemption Price, Series B Redemption Price, Series C Redemption Price, Series M1-A Redemption Price, Series M1-B Redemption Price and the Series E Redemption Price, each sometimes referred to as a “Redemption Price”), in three equal annual installments commencing, 30 days after receipt by the Corporation at any time on or after January 31, 2012, from the holders of at least 66 2/3% of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock (calculated on an as-if converted basis), consenting in writing or voting together as a single class, of written notice requesting redemption of all shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock (the date of each such installment, whether for the Series A Preferred Stock, Series B Preferred Stock

and Series C Preferred Stock, the Series M1-A Preferred Stock, the Series M1-B Preferred Stock, the Series D Preferred Stock or the Series E Preferred Stock, being referred to as a "Redemption Date"; provided, however, that so long as the outstanding shares of Series D Preferred Stock represent at least 15% of the issued and outstanding shares of Common Stock (calculated on a fully-diluted, as converted basis), any redemption of the Series D Preferred Stock pursuant to this Section 6(a) shall also require the consent of a Series D Majority; provided, further, that any redemption of any Preferred Stock pursuant to this Section 6(a) shall also require the consent of a Series E Majority. On each Redemption Date, the Corporation shall redeem, first, on a pro rata basis in accordance with the respective number of shares of Series E Preferred Stock owned by each holder, the number of outstanding shares of Series E Preferred Stock determined by dividing (i) the total number of shares of Series E Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies), and second, on a pro rata basis (calculated on an as-if converted basis) in accordance with the respective number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock owned by each holder, the number of outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock determined by dividing (i) the total number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock and Series D Preferred Stock outstanding immediately prior to such Redemption Date (calculated on an as-if converted basis) by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares that are then scheduled to be redeemed, the Corporation shall first redeem a pro rata portion of each holder's redeemable shares of Series E Preferred Stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and second, shall redeem a pro rata portion of each holder's redeemable shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(b) Redemption Notice. Not less than 15 days prior to each Redemption Date, written notice of the mandatory redemption (the "Redemption Notice") shall be mailed, postage prepaid, to each holder of record of Preferred Stock to be redeemed, at its post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law. Each Redemption Notice shall state:

- (1) the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and

Series E Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date;

- (II) the Redemption Date;
- (III) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section C.4(a)); and
- (IV) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed on such date.

(c) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, as applicable, to be redeemed on such Redemption Date shall, unless such holder has exercised his, her or its right to convert such shares as provided in Section C.4 hereof, surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

(d) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

(e) Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock which are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately canceled and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series M1-A Preferred Stock, Series M1-B Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock following redemption.

(f) Failure to Redeem. If any shares of Preferred Stock scheduled to be redeemed pursuant hereto are not redeemed on the applicable Redemption Date for any reason, all such unredeemed shares shall remain outstanding and entitled to all the rights and preferences provided herein, and the Corporation shall pay interest on the Redemption Price applicable to such unredeemed shares at an aggregate per annum rate equal to ten percent (10%) (increased by 1% at the end of each three (3) month period thereafter until the applicable Redemption Price, and any interest thereon, is paid in full), with such interest to accrue daily in arrears and to be compounded quarterly; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the amount of interest required to be paid hereunder shall automatically be reduced to eliminate such excess; provided, however, that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the applicable Redemption Date to the extent permitted by law.

FIFTH: Subject to any additional vote required by this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Corporation's bylaws.

SIXTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article SIXTH to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

SEVENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the General Corporation Law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article SEVENTH shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or other agent occurring prior to, such amendment, repeal or modification.

EIGHTH: Subject to any additional vote required by this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

NINTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries or (ii) any holder of shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock that were acquired pursuant to that certain Preferred Stock Purchase Agreement, dated as of August 4, 2005, by and among the Corporation, Peter Adderton and the purchasers named therein, any holder of Series M1-A Preferred Stock or Series M1-B Preferred Stock that were acquired pursuant to the MTVN Purchase Agreement, any holder of shares of Series D Preferred Stock that were acquired pursuant to that certain Preferred Stock Purchase Agreement, dated as of February 6, 2006, by and among the Corporation and the purchasers named therein, any holder of shares of Series E Preferred Stock that were acquired pursuant to the Series E Purchase Agreement or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

TENTH: Elections of directors need not be by written ballot unless the Corporation's bylaws shall so provide.

ELEVENTH: The books of the Corporation may be kept at such place within or without the State of Delaware as the Corporation's bylaws may provide or as may be designated from time to time by the Board of Directors of the Corporation.

* * *

4. The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

5. That said Fourth Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's certificate of incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Fourth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 15th day of February, 2007.

By: 

Name: Peter Adderton

Title: Chief Executive Officer