

State of Delaware
Secretary of State
Division of Corporations
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AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF

ADVANCED BIOHEALING, INC.
a Delaware Corporation

(Pursuant to Sections 228, 242 and 245 of the
General Corporation Law of the State of Delaware)

N9A2

Advanced BioHealing, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

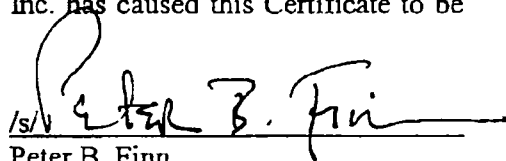
FIRST: The original Certificate of Incorporation of Advanced BioHealing, Inc. was filed with the Secretary of State of Delaware on January 30, 2004 and an Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on September 7, 2004.

SECOND: The Amended and Restated Certificate of Incorporation of Advanced BioHealing, Inc. in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.

THIRD: The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Advanced BioHealing, Inc. has caused this Certificate to be signed by its Secretary this 27th day of September, 2005.

By:



Peter B. Finn
Secretary

EXHIBIT A

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ADVANCED BIOHEALING, INC.,
*a Delaware Corporation***

ARTICLE I

The name of this corporation (the "*Corporation*") is Advanced BioHealing, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle 19808. The name of the registered agent at that address is The Corporation Service Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "*DGCL*").

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock ("*Preferred Stock*") and Common Stock ("*Common Stock*"). The total number of shares of Preferred Stock that the Corporation shall have authority to issue is 23,868,348 shares, 3,933,137 of which shall be designated Series A Preferred Stock (the "*Series A Preferred Stock*") and 19,935,211 of which shall be designated Series B Preferred Stock (the "*Series B Preferred Stock*"). The total number of shares of Common Stock that the Corporation shall have authority to issue is 50,000,000. The Preferred Stock shall have a par value of \$.001 per share and the Common Stock shall have a par value of \$.001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, restrictions and other matters relating to the Preferred Stock are as follows:

1. Dividends. Subject to the provisions set forth herein, the holders of Preferred Stock shall be entitled to receive, when, as and if declared by the Corporation's Board of Directors (the "*Board*"), out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board. The holders of the Preferred Stock shall be entitled to participate in any dividends to be paid to the holders of Common Stock as if each such share of Preferred Stock had been converted into Common Stock pursuant to the

provisions of Section 3 below, such number to be determined as of the record date for the determination of holders of Common Stock entitled to receive such dividends.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (including, without limitation, upon any bankruptcy), the holders of Series B Preferred Stock and Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to holders of the Common Stock, by reason of their ownership of such stock, (i) for each share of Series B Preferred Stock, the sum of (A) \$0.4013 per share of Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares of Series B Preferred Stock, the "*Original Series B Issue Price*") plus (B) an amount equal to nine percent (9%) of the Original Series B Issue Price, compounded annually on each September 30, from the Purchase Date (as defined below) through and including the earlier of (x) the date of the liquidation, dissolution or winding up of the Corporation and (y) the date that is three (3) years after the Purchase Date (such sum, the "*Series B Preference Amount*") and (ii) for each share of Series A Preferred Stock, the sum of (A) \$0.6102 per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares of Series A Preferred Stock, the "*Original Series A Issue Price*") plus (B) an amount equal to nine percent (9%) of the Original Series A Issue Price, compounded annually on each September 30, from the Purchase Date through and including the earlier of (x) the date of the liquidation, dissolution or winding up of the Corporation and (y) the date that is three (3) years after the Purchase Date (such sum, the "*Series A Preference Amount*"). In the event that the assets and funds legally available for distribution to the stockholders of the Corporation are insufficient to pay the Series B Preference Amount in respect of each share of Series B Preferred Stock and the Series A Preference Amount in respect of each share of Series A Preferred Stock as described above, then all funds or assets legally available for distribution to the holders of Series B Preferred Stock and Series A Preferred Stock shall be paid to such holders of Series B Preferred Stock and Series A Preferred Stock pro rata based on the dollar amount to which they are otherwise entitled under this Section 2(a).

(b) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (including, without limitation, upon any bankruptcy), after, and only after, full payment has been made to the holders of the Series B Preferred Stock and the Series A Preferred Stock required by Section 2(a), the holders of Common Stock and the Preferred Stock shall be entitled to share ratably in all remaining assets and funds, if any, based upon the number of shares of Common Stock then held, with each share of Preferred Stock treated as the number of shares of Common Stock into which such share of Preferred Stock is then convertible.

(c) (i) For purposes of this Section 2, unless otherwise agreed in writing by the holders of at least a majority of the outstanding shares of Common Stock issuable upon conversion of the Preferred Stock voting together as a single class (the "*Majority Preferred Holders*"), a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include: (A) any acquisition of the Corporation by another person or entity

(or group of persons or entities) by means of any transaction or series of transactions (including, without limitation, any reorganization, consolidation or merger of the Corporation with or into any other entity) (x) in which the holders of the Corporation's outstanding capital stock immediately before the first such transaction do not, immediately after any other such transaction, retain stock or other equity interests representing at least fifty percent (50%) of the voting power of the surviving entity of such transaction or (y) after which any such person or entity and its affiliates hold more than fifty percent (50%) of the voting power of the Corporation's outstanding capital stock; or (B) any sale, conveyance or disposition of all or substantially all of the assets of the Corporation (any such transaction, a "*Sale Transaction*"). Unless otherwise agreed upon by the Majority Preferred Holders, no stockholder of the Corporation shall enter into any transaction or series of related transactions resulting in a liquidation, dissolution or winding up of the Corporation pursuant to the terms hereof unless the terms of such transaction or transactions provide that the consideration to be paid to the stockholders of the Corporation is to be allocated in accordance with the preferences and priorities set forth in this Section 2.

(ii) In the event of any Sale Transaction, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value as determined by the Board and approved by the Majority Preferred Holders. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through NASDAQ National Market System, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board and approved by the Majority Preferred Holders.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board and approved by the Majority Preferred Holders.

(iii) In the event that there is more than one type of consideration payable to the Corporation or its stockholders in connection with any Sale Transaction, the holders of the Preferred Stock may elect, by the written consent or vote of the Majority Preferred Holders, to receive one or more specified types of consideration in respect of the Series B Preference Amount and the Series A Preference Amount. Such type or types of consideration

and the respective amounts of such types of consideration to be received by the holders of Preferred Stock in respect of the Series B Preference Amount and the Series A Preference Amount shall be determined by the Majority Preferred Holders.

3. Conversion. The holders of the Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into fully paid and nonassessable shares of Common Stock of the Corporation. The number of shares of Common Stock into which each share of Series B Preferred Stock may be converted shall be determined by dividing the Original Series B Issue Price by the Applicable Conversion Price for the Series B Preferred Stock in effect on the date that the holder thereof elects to convert such share. The initial Applicable Conversion Price of the Series B Preferred Stock is the Original Series B Issue Price. The number of shares of Common Stock into which each share of Series A Preferred Stock may be converted shall be determined by dividing the Original Series A Issue Price by the Applicable Conversion Price for the Series A Preferred Stock in effect on the date that the holder thereof elects to convert such share. The initial Applicable Conversion Price of the Series A Preferred Stock is \$0.29453. The Applicable Conversion Price for each series of Preferred Stock is subject to adjustment after the Purchase Date (as defined below) as set forth in this Section 3.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock (as set forth in Section 3(a)) upon the earlier of (i) the consummation of a firm commitment underwritten public offering of Common Stock registered under the Securities Act of 1933, as amended, (x) at a public offering price of not less than 400% of the Original Series B Issue Price, (y) resulting in net proceeds to the Corporation of not less than \$20,000,000 and (z) after which the Common Stock is either listed on a national securities exchange or traded in the NASDAQ National Market System and (ii) the date specified by written consent of the holders of at least a majority of the outstanding shares of Series B Preferred Stock (the "*Required Holders*"). Such conversion shall be automatic, without need for any further action by the holders of shares of Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of Preferred Stock so converted are surrendered to the Corporation or the holder of record of such shares notifies the Corporation that such certificates have been lost, stolen or destroyed and such holder executes an agreement to indemnify the Corporation from any loss incurred by it in connection with such certificates, in each case in accordance with the procedures described in Section 3(c) below. Upon the conversion of Preferred Stock pursuant to this Section 3(b), the Corporation shall promptly send written notice thereof, by registered or certified mail, return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Preferred Stock at such holder's address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Preferred Stock must be surrendered at the office of the Corporation (or of its transfer agent for the Common Stock, if applicable) in the manner described in Section 3(c) below.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to receive certificates representing shares of Common Stock into which shares of Preferred Stock are converted pursuant to this Section 3, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock (or such holder notifies the Corporation that such certificates have been lost, stolen or destroyed and such holder executes an agreement to indemnify the Corporation from any loss incurred by it in connection with such certificates), and shall give written notice to the Corporation at such office of the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable and in no event later than ten (10) days after the delivery of said certificates, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion pursuant to this Section 3 shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the effective date of such conversion. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended or any Sale Transaction, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering or the closing of such Sale Transaction, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities or the closing of such Sale Transaction.

(d) Conversion Price Adjustments for Certain Dilutive Issuances, Splits and Combinations. The Applicable Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) In the event that the Corporation shall issue or sell, at any time, or from time to time, after the time upon which any shares of Series B Preferred Stock were first issued (the "*Purchase Date*"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Applicable Conversion Price for any series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Applicable Conversion Price for such series of Preferred Stock in effect immediately prior to each such issuance shall be reduced, concurrently with such issuance or sale, to a price determined by multiplying the Applicable Conversion Price for such series of Preferred Stock by a fraction, the numerator of which shall be the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issue or sale and (y) the number of shares of Common Stock that the aggregate consideration actually received by the Corporation for such Additional Stock so issued would purchase at the Applicable Conversion Price for such series of Preferred Stock in effect immediately prior to such issuance or sale, and the denominator of which shall be equal to the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issue or sale and (y) the number of shares of Additional Stock (calculated on an as converted to Common Stock basis) so issued or sold. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue or sale shall be calculated as if all shares of Preferred Stock and all vested securities that are

then exercisable for or convertible into shares of Common Stock had been fully exercised for or converted into shares of Common Stock as of such time.

(B) Except to the limited extent provided for in Sections 3(d)(i)(E)(3) and (E)(4), no adjustment of any Applicable Conversion Price of any series of Preferred Stock pursuant to this Section 3(d) shall have the effect of increasing the Applicable Conversion Price for such series of Preferred Stock above the Applicable Conversion Price for such series of Preferred Stock in effect immediately prior to such adjustment.

(C) In the case of the issuance or sale of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor after deducting any discounts, commissions or other expenses paid or incurred by the Corporation in connection with the issuance or sale thereof.

(D) In the case of the issuance or sale of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board and the Required Holders irrespective of any accounting treatment. The issuance or sale of Options (as defined below) or Convertible Securities (as defined below) together with other securities of the Corporation in an integrated transaction in which no specific consideration is allocated to such Options or Convertible Securities shall be deemed to be issuance of shares of Common Stock at no consideration.

(E) In the event that the Corporation at any time or from time to time after the Purchase Date shall issue any securities by their terms convertible into or exchangeable for Common Stock ("*Convertible Securities*") or any options, rights or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities ("*Options*") or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, the following provisions shall apply for all purposes of this Section 3(d)(i) and Section 3(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such Options, assuming the satisfaction of any conditions to exercisability (including, without limitation, the passage of time), shall be deemed to be Additional Stock issued at the time such Options were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 3(d)(i)(C) and 3(d)(i)(D)), if any, received by the Corporation upon the issuance of such Options plus the minimum exercise price provided in such Options.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for such Convertible Securities or upon the exercise of Options for such Convertible Securities and subsequent conversion or exchange thereof, assuming the satisfaction of any conditions to convertibility or exchangeability and exercisability (including, without limitation, the passage of time), shall be deemed to be Additional Stock issued at the time such Convertible Securities were issued or such Options for Convertible Securities were issued and for a consideration

equal to the consideration, if any, received by the Corporation for any such Convertible Securities and related Options, plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such Convertible Securities or the exercise of any related Options (the consideration in each case to be determined in the manner provided in Sections 3(d)(i)(C) and 3(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon exercise of such Options or upon conversion of or in exchange for such Convertible Securities (including, without limitation, a change resulting from the antidilution provisions thereof), the Applicable Conversion Price for any series of Preferred Stock to the extent in any way affected by or initially determined using such Options or Convertible Securities shall be recomputed to reflect such change.

(4) Upon the expiration of any such Options, the Applicable Conversion Price for any series of Preferred Stock to the extent in any way affected by the issuance of such Options shall be recomputed to reflect the issuance of only the number of shares of Common Stock actually issued or issuable upon the exercise of such Options.

(5) No readjustment or readjustments pursuant to either Section 3(d)(i)(E)(3) or (4) shall have the effect of increasing the Applicable Conversion Price of any series of Preferred Stock to an amount that exceeds the lower of (x) the Applicable Conversion Price for such series of Preferred Stock on the Purchase Date or (y) the Applicable Conversion Price for such series of Preferred Stock that would have resulted from all issuances of Additional Stock between the Purchase Date and such readjustment date. In the event of any adjustment to the Applicable Conversion Price for any series of Preferred Stock as a result of the issuance of Options or Convertible Securities pursuant to this Section 3(d), no further adjustment to the Applicable Conversion Price for such series of Preferred Stock shall be made for the actual issuance of Common Stock upon the exercise of any such Options or the conversion or exchange of such Convertible Securities.

(ii) "**Additional Stock**" shall mean all shares of Common Stock issued (or deemed to have been issued pursuant to Section 3(d)(i)(E)) by the Corporation after the Purchase Date other than:

(A) Common Stock issued pursuant to a transaction described in Section 3(d)(iii) hereof;

(B) Common Stock issued pursuant to (1) the exercise of the stock options granted pursuant to the Corporation's 2004 Stock Option Plan, as amended as of the date hereof (the "**Option Plan**") and outstanding on the Purchase Date exercisable for 2,308,576 shares of Common Stock (as adjusted for any stock dividends, combinations and splits with respect to such shares of Common Stock), (2) restricted stock awards or stock options issued or granted after the Purchase Date pursuant to the

Option Plan, as amended as of the date hereof, up to a maximum of 6,054,638 shares of Common Stock (as adjusted for any stock dividends, combinations and splits with respect to such shares of Common Stock), or (3) restricted stock awards or stock options issued or granted after the Purchase Date pursuant to the Corporation's Option Plan, as amended as of the date hereof, to the extent that any stock options or restricted stock awards previously granted pursuant to clause (1) or clause (2) of this Section 3(d)(i)(B) are canceled or expire unexercised or are repurchased upon termination of employment or the applicable consulting arrangement with the Corporation at cost;

(C) shares of Common Stock issued in a bona fide, firmly underwritten public offering registered under the Securities Act of 1933, as amended, pursuant to a registration statement on Form S-1, or any applicable successor form;

(D) 19,935,211 shares of Series B Preferred Stock pursuant to the terms of that certain Series B Preferred Stock Purchase Agreement by and between the Corporation the other parties thereto;

(E) shares of Common Stock issued upon conversion of any shares of the Preferred Stock; and

(F) as otherwise determined by the prior written consent of the Required Holders.

(iii) In the event that the Corporation should at any time, or from time to time, after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock ("*Common Stock Equivalents*") without payment of any consideration by such holder for the additional shares of Common Stock or Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Applicable Conversion Price for each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion thereof shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents (determined in the manner provided for deemed issuances set forth in Section 3(d)(i)(E)).

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Applicable Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion thereof shall be decreased in proportion to such decrease in outstanding shares.

(e) Reorganizations, Mergers or Consolidations. If at any time or from time to time the Common Stock is converted into other securities, assets or property, whether pursuant

to a reorganization, merger, consolidation, sale of all or substantially all of the Corporation's assets or otherwise (other than a subdivision or combination provided for elsewhere in this Section 3 or a Sale Transaction constituting a deemed liquidation of the Corporation pursuant to Section 2), provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock, the number of shares of stock or other securities, assets or property of the Corporation or otherwise to which a holder of Common Stock deliverable upon conversion would have been entitled in connection with such transaction.

(f) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock after aggregating all shares owned by the holder thereof and, in lieu of any fractional shares to which such holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective fair market value of such share as determined by the Board in good faith.

(ii) Upon the occurrence of each adjustment or readjustment of the Applicable Conversion Price pursuant to this Section 3, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Applicable Conversion Price for such series of Preferred Stock at the time in effect and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(g) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(h) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all of the then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to this Certificate of Incorporation.

(i) Notices. Any notice required by the provisions of this Section 3 to be given to the holders of shares of Preferred Stock shall be deemed given three business days after deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

(j) Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock upon conversion of any shares of Preferred Stock; *provided, however*, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(k) Definition of "Common Stock". As used in this Section 3, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$.001 per share, as constituted on the Purchase Date and shall also include any security of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; *provided* that the shares of Common Stock receivable upon conversion of shares of Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization of the outstanding shares thereof, the stock, securities or assets provided for in Section 3(e).

4. Voting Rights. In addition to any special class or series voting arrangements, the holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could then be converted and, with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all fractional shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole share (with one-half being rounded upward).

5. Protective Provisions. As long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by affirmative vote or written consent) of the Required Holders:

(a) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock (by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise);

(b) increase or decrease the total number of outstanding shares of Preferred Stock (or any series thereof) (by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise);

(c) authorize or issue, or obligate itself to issue, or reclassify any securities into, any equity security (including any security convertible into or exercisable for any such equity security) having rights, preferences or privileges senior or superior to, or being on a parity with, the rights, preferences and privileges of the Series B Preferred Stock (by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise);

(d) declare or pay any dividend or declare or make any distribution in respect of, or redeem, purchase or otherwise acquire any of, (or pay into or set aside for a sinking fund for such purpose) its capital stock or other equity securities; *provided, however*, that this restriction shall not apply to (i) the redemption of shares of Series B Preferred Stock pursuant to Section 6 or (ii) the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for the Corporation or any subsidiary of the Corporation pursuant to agreements entered into in connection with the original issuance of such shares under which the Corporation has the option to repurchase such shares at cost upon termination of such person's employment or other relationship with the Corporation;

(e) (i) sell, lease, assign, license, convey, or otherwise dispose of or encumber all or any substantial portion of its assets, property or business, (ii) merge or consolidate with or into any other entity, (iii) effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of, (iv) effect a reorganization, recapitalization or division (by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise) or (v) liquidate, dissolve or wind-up;

(f) permit any subsidiary of the Corporation to (i) sell, lease, assign, license, convey, or otherwise dispose of or encumber all or any substantial portion of its assets, property or business, (ii) merge or consolidate with or into any other entity or (iii) liquidate, dissolve or wind-up;

(g) amend the Corporation's Certificate of Incorporation, certificates of designation or bylaws (by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise);

(h) (i) permit any subsidiary of the Corporation to authorize or issue any security to any person or entity other than to the Corporation or (ii) sell, assign, encumber, convey or otherwise dispose of any security of any subsidiary of the Corporation;

(i) sell, lease, assign, license, convey, or otherwise dispose of or encumber any assets or property of the Corporation or any subsidiary of the Corporation outside of the ordinary course of business;

(j) acquire or permit any subsidiary of the Corporation to acquire (by merger, purchase of stock or assets, any other business combination transaction or otherwise) any assets or securities other than in the ordinary course of business;

(k) engage, or permit any subsidiary of the Corporation to engage, in any business other than the business in which the Corporation is engaged on the Purchase Date;

(l) (i) incur any debt (other than trade payables incurred in the ordinary course of business) or guaranty the debt of any other person or entity or (ii) permit any subsidiary of the Corporation to incur any debt (other than trade payables incurred in the ordinary course of business) or guaranty any debt;

(m) create, issue, authorize or grant (or permit any subsidiary of the Corporation to create, issue, authorize or grant) any payment or other consideration to any person or entity in connection with a Sale Transaction other than in respect of any outstanding equity interest in the Corporation; or

(n) grant or otherwise provide, or permit any subsidiary of the Corporation to grant or otherwise provide, any of the foregoing voting and consent rights or any other voting or consent right granted by the Corporation to the holders of the Series B Preferred Stock to any other person or entity.

6. Redemption. The Corporation shall be obligated to redeem the Series B Preferred Stock as follows:

(a) If, at any time after September 30, 2010, the holders of at least 66-2/3% of the then outstanding shares of Series B Preferred Stock request that the Corporation redeem the outstanding shares of Series B Preferred Stock, the Corporation shall redeem all of the outstanding shares of Series B Preferred Stock in three equal annual installments commencing on the Initial Redemption Date (as defined below) and continuing on the following two consecutive annual anniversaries of the Initial Redemption Date (each, a "*Redemption Date*"). The Corporation shall effect such redemption on each Redemption Date by paying the holders of the Series B Preferred Stock, in cash therefor, an amount per share of Series B Preferred Stock being redeemed at such time equal to the Series B Preference Amount. The date that the Corporation shall redeem the first installment of the Series B Preferred Stock shall be specified in the request delivered to the Corporation under this Section 6(a), which date shall be not less than thirty (30) nor more than sixty (60) days after the date that such request is delivered to the Corporation (the "*Initial Redemption Date*"). At least twenty (20) days prior to the Initial Redemption Date, the Corporation shall send (via a nationally recognized overnight courier) a notice to all holders of Series B Preferred Stock setting forth the Redemption Dates and the place at which such holders may obtain payment upon surrender of their share certificates.

(b) If the Corporation does not have sufficient funds legally available to redeem all shares to be redeemed on any Redemption Date, then all funds or assets legally available for distribution to the holders of Series B Preferred Stock shall be paid to such holders pro rata based on the aggregate amount to which they are otherwise entitled under this Section 6 and the Corporation shall redeem the remaining shares of Series B Preferred Stock as soon as sufficient funds are legally available. For the purpose of determining whether funds are legally

available for redemption of shares of Series B Preferred Stock as provided herein, the Corporation shall value its assets at the highest amount permissible under applicable law.

(c) On or after each Redemption Date, each holder of shares of Series B Preferred Stock to be redeemed shall surrender such holder's certificates representing such shares to the Corporation and thereupon the redemption amount of such shares shall be payable to the order of the person or entity whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after each Redemption Date, unless there shall have been a default in payment of the redemption amount or the Corporation is unable to pay the redemption amount due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series B Preferred Stock (except the right to receive the redemption amount upon surrender of their certificates) shall cease and terminate with respect to such shares. In the event that shares of Series B Preferred Stock are not redeemed on any Redemption Date, such shares of Series B Preferred Stock shall remain outstanding and shall be entitled to all of the rights, preferences and privileges provided herein.

(d) The Series A Preferred Stock is not redeemable.

7. Board of Directors.

(a) The holders of Series B Preferred Stock shall be entitled, by vote of the holders of a majority of the then outstanding shares of Series B Preferred Stock, to elect two (2) members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(b) The holders of Series A Preferred Stock shall be entitled, by vote of the holders of a majority of the then outstanding shares of Series A Preferred Stock, to elect one (1) member of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director.

(c) The holders of Common Stock, voting separately as a voting class, shall be entitled, by vote of the holders of a majority of the then outstanding shares of Common Stock, to elect two (2) members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(d) The holders of Common Stock and Preferred Stock, voting together as a single class, shall be entitled, by vote of the holders of a majority of the then outstanding shares of Common Stock (calculated on an as-if-converted to Common Stock basis), to elect all remaining members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

8. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

C. Common Stock.

1. Dividend Rights. Subject to the provisions set forth herein and the preferential rights of holders of all classes of stock at the time outstanding having preferential rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased by the affirmative vote of the holders of capital stock having a majority of the voting power of the Corporation (voting together on an as-if-converted basis), irrespective of the provision of Section 242(b)(2) of the DGCL.

ARTICLE V

A director of the Corporation shall, to the fullest extent permitted by the DGCL as it now exists or as it may hereafter be amended, not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended, after approval by the stockholders of this Article V, 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 DGCL as so amended.

Any amendment, repeal or modification of this Article V, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article V by the stockholders of the Corporation shall not apply to or adversely affect any right or protection of a director of the Corporation occurring prior to the time of such amendment, repeal, modification or adoption.

ARTICLE VI

ARTICLE VI

The Corporation shall indemnify its directors, and shall provide for advancement of the expenses of such persons, to the fullest extent provided by Section 145 of the DGCL. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which State 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 DGCL, subject only to limits created by applicable law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

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

ARTICLE VII

Subject to the provisions of Section 5 of Article IV(B) hereof, the Board may from time to time adopt, amend, alter, supplement, rescind or repeal any or all of the Bylaws of the Corporation without any action on the part of the stockholders; *provided, however*, that the stockholders may adopt, amend or repeal any Bylaw adopted by the Board, and no amendment or supplement to the Bylaws adopted by the Board shall vary or conflict with any amendment or supplement adopted by the stockholders.

ARTICLE VIII

Subject to the provisions of Article IV, the number of directors of the Corporation shall be set from time to time by resolution of the Board.

ARTICLE IX

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE X

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any statutory requirements) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation.

ARTICLE XI

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

ARTICLE XII

The property and assets of the stockholders of the Corporation shall not, to any extent whatsoever, be subject to the payment of the debts of the Corporation.

ARTICLE XIII

Pursuant to Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation or any subsidiary of the Corporation in, or in being offered an opportunity to participate in, any and all business opportunities that are presented to the holders of Series B Preferred Stock or their affiliates (including, without limitation, any representative or affiliate of such holders of Series B Preferred Stock serving on the Board or the board of directors or other governing body of any subsidiary of the Corporation (each a "*Board of Directors*")) (collectively, the "*Series B Investor Parties*"). Without limiting the foregoing renunciation, the Corporation on behalf of itself and its subsidiaries (a) acknowledges that the Series B Investor Parties are in the business of making investments in, and have or may have investments in, other businesses similar to and that may compete with the businesses of the Corporation and its subsidiaries ("*Competing Businesses*") and (b) agrees that the Series B Investor Parties shall have the unfettered right to make investments in or have relationships with other Competing Businesses independent of their investments in the Corporation. By virtue of a Series B Investor Party holding capital stock of the Corporation or by having persons designated by or affiliated with such Series B Investor Party serving on or observing at meetings of any Board of Directors or otherwise, no Series B Investor Party shall have any obligation to the Corporation, any of its subsidiaries or any other holder of capital stock or securities of the Corporation to refrain from competing with the Corporation and any of its subsidiaries, making investments in or having relationships with Competing Businesses, or otherwise engaging in any commercial activity and none of the Corporation, any of its subsidiaries or any other holder of capital stock or securities of the Corporation shall have any right with respect to any investment or activities undertaken by such Series B Investor Party. Without limitation of the foregoing, each Series B Investor Party may engage in or possess any interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Corporation or any of its subsidiaries, and none of the Corporation, any of its subsidiaries or any other holder of capital stock or securities of the Corporation shall have any rights or expectancy by virtue of such Series B Investor Parties' relationships with the Corporation, or otherwise in and to such independent ventures or the income or profits derived therefrom; and the pursuit of any such ventures, even if such investment is in a Competing Business, shall not for any purpose be deemed wrongful or improper. No Series B Investor Party shall be obligated to present any particular investment opportunity to the Corporation or its subsidiaries even if such opportunity is of a character that, if presented to the Corporation or such subsidiary, could be taken by the Corporation or such subsidiary, and each Series B Investor Party shall continue to have the right for its own respective account or to recommend to others any such particular investment opportunity. Nothing set forth in this Article XIII shall limit any confidentiality obligation applicable to any member of a Board of Directors.