

**ARTICLES OF AMENDMENT AND RESTATEMENT
THE ARTICLES OF INCORPORATION OF
ATHENIX CORP.**

Pursuant to Section 55-10-07 of the North Carolina Business Corporation Act, the undersigned corporation hereby submits these Articles of Amendment and Restatement for the purpose of amending its Articles of Incorporation and also for the purpose of integrating into one document its original Articles of Incorporation and all amendments thereto:

1. The name of the corporation is Athenix Corp., formerly known as Polaris Biosciences, Inc.
2. Attached hereto as Exhibit A are the Amended and Restated Articles of Incorporation of Athenix Corp. which contain an amendment to the Articles of Incorporation requiring shareholder approval regarding the classes of stock.
3. The attached Amended and Restated Articles of Incorporation were approved and adopted by the shareholders of Athenix Corp. on August 8, 2001, in the manner prescribed by Chapter 55 of the North Carolina General Statutes and other applicable law.
4. These Articles of Amendment and Restatement will become effective upon filing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8 day of August, 2001.

ATHENIX CORP.

By: Michael Koziel
Name: Mike Koziel
Title: President and Chief Executive Officer

EXHIBIT A
AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
ATHENIX CORP.

ARTICLE I

The name of the Corporation is Athenix Corp. (the “**Corporation**”).

ARTICLE II

The address of the registered office of the Corporation in the State of North Carolina is 2500 First Union Capitol Center, Raleigh, NC 27601, Wake County, and the name of its registered agent at such address is Gerald F. Roach, Esq.

ARTICLE III

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

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue two classes of shares to be designated, respectively, “**Common Stock**” and “**Preferred Stock**.” The total number of shares of capital stock that the Corporation shall have authority to issue is Fifty Million (50,000,000). The total number of shares of Common Stock the Corporation shall have authority to issue is Thirty Million (30,000,000) shares, \$0.01 par value per share. The total number of shares of Preferred Stock the Corporation shall have authority to issue is Twenty Million (20,000,000) shares, \$0.01 par value per share, of which Eight Million One Hundred Twenty-Five Thousand (8,125,000) shares shall be designated Series A Preferred Stock (the “**Series A Preferred Stock**”).

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in one or more series. The powers, rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock, are set forth in Article IV, Section C. The remaining shares of Preferred Stock of the Corporation (if any) may be issued from time to time in one or more series, the shares of each such series to have such designations, preferences, relative rights, and powers, including voting powers, if any (or qualifications, limitations or restrictions thereof) as are stated in the resolution or resolutions providing for the issuance of such series adopted by the Board of Directors of the Corporation. Authority is expressly granted to the Board of Directors, subject to the provisions hereof and to any limitations provided under the Business Corporation Act of North Carolina, to authorize the issuance of one or more series within a class of Preferred

Stock, and with respect to each such series to determine and fix by resolution or resolutions the designations, preferences, relative rights, and powers, including voting powers, full or limited, or no voting power, of such shares, or the qualifications, limitations or restrictions of such shares. This paragraph is intended to afford to the Board of Directors the maximum authority permitted under Section 55-6-02 of the North Carolina General Statutes.

C. Designated Preferred Stock.

The powers, rights, preferences, privileges and restrictions granted to and imposed on the Series A Preferred Stock are as follows:

1. Dividends. (a) The holders of the Series A Preferred Stock shall be entitled to receive dividends prior and in preference to any dividend on Common Stock or other Preferred Stock at the rate of \$0.08 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, payable out of funds legally available therefor (the "Base Series A Dividend"). Such dividends shall accrue and be cumulative beginning on the date of issuance of such shares and shall be payable only when, as and if declared by the Board of Directors. Notwithstanding the foregoing, no dividends shall accrue on the Preferred Stock after the occurrence of a Seven Times Liquidity Event (as hereinafter defined) or the closing of the sale of the Corporation's Preferred Stock or securities convertible into Preferred Stock at a purchase price of Seven Dollars (\$7.00) or more per share of Preferred Stock (including, in the case of convertible securities, the amount of additional consideration payable to the Corporation upon exercise or conversion of such convertible securities) (as adjusted for stock splits, stock dividends or combinations of similar events). No dividends (other than those payable solely in Common Stock of the Corporation) shall be paid on any share of Common Stock during any fiscal year of the Corporation until dividends in the total amount of \$0.08 per share (as adjusted for any stock dividends, combination or splits with respect to such shares) on the Series A Preferred shall have been paid or declared and set apart during that fiscal year. Subject to the foregoing and in the event dividends are paid on any share of Common Stock, the dividend shall be paid with respect to all outstanding shares of Series A Preferred Stock, in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(b) In the event the Corporation shall declare a distribution (other than any distribution described in Article IV, Section C.2) payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness), then, in each such case the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Series A Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

2. Liquidation Preference.

(a) Rights on Liquidation. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a “**Liquidation Event**”), the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock and any series of Preferred Stock the terms of which specifically provide that such series ranks junior and subordinate to the Series A Preferred Stock with respect to the distribution of assets upon any liquidation or deemed liquidation, an amount equal to One Dollar (\$1.00) per share (as adjusted for any stock dividends, combinations and splits with respect to such shares) (the “**Original Issue Price**”) plus all accrued or declared but unpaid dividends on such share for each share of Series A Preferred Stock then held by them. If upon a Liquidation Event, the assets and funds thus distributed among the holders of Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive, provided, however, that no preference pursuant to this Article IV, Section C.2(a) shall be paid to the holders of Preferred Stock if the proceeds of any Liquidation Event payable to the holders of shares of any series of Preferred Stock pursuant to Article IV, Section C.2(b) below would be greater than seven times (7x) the Original Issue Price per share, assuming no payment is required to be made pursuant to this Article IV, Section C.2(a) (a “Seven Times Liquidity Event”).

(b) Distribution of Remaining Assets. After payment to the holders of the Series A Preferred Stock the amounts set forth in Article IV, Section C.2(a) above (unless the proviso in the ultimate sentence of Article IV, Section C.2(a) shall apply, in which case no payment is required to be made pursuant to such section), the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of the Common Stock and Series A Preferred Stock in proportion to the shares of Common Stock then held by them and the shares of Common Stock which they then have the right to acquire upon conversion of the shares of Series A Preferred Stock held by them.

(c) Certain Other Transactions. For purposes of this Article IV, Section C.2, at the option of the holders of a majority of the Series A Preferred Stock, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (A) any transaction or series of transactions which results in the disposition to a single person or group of affiliated persons of greater than fifty percent (50%) of the voting power of the Corporation, (B) any acquisition of the Corporation effected by means of merger, consolidation, share exchange or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its affiliate or (C) a sale of all or substantially all of the assets of the Corporation (each such event, a “**Combination**”).

(d) Valuation of Non-Cash Assets. Whenever the distribution provided for in this Article IV, Section C.2 shall be payable in securities or property other than cash, the value of

such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors.

3. Voting Rights.

(a) Generally. Except as otherwise required by applicable law or as set forth herein, the shares of Series A Preferred Stock shall be voted equally with the shares of Common Stock (voting together with the shares of Common Stock as a single class) at any annual or special meeting of stockholders of the Corporation, or may act by written consent in the same manner as Common Stock, upon the following basis: each holder of one or more shares of Series A Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation and to such number of votes for the shares of such series of Preferred Stock held by him immediately after the close of business on the record date fixed for such meeting, or on the effective date of such written consent, as shall be equal to the number of whole shares of Common Stock into which all of his shares of such series of Preferred Stock are convertible immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) Restrictions and Limitations. In addition to any other rights provided by law, and notwithstanding any provision in this Certificate of Incorporation to the contrary, so long as at least One Million (1,000,000) shares of Series A Preferred Stock remain outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of a majority of the then-outstanding shares of Series A Preferred Stock will not:

(i) take any action that may alter or change the designations, powers, rights, preferences or privileges, or the qualifications, limitations or restrictions of the Series A Preferred Stock;

(ii) increase or decrease the authorized number of shares of any class or series of the Company's capital stock;

(iii) authorize, issue, or become obligated to issue shares of any class or series of stock or other securities having any preference, priority or parity as to dividends, liquidation, redemption, conversion, voting, assets or other rights superior to or on parity with any such preference or priority of the Series A Preferred Stock, or authorize, issue, or become obligated to issue shares of stock of any class or series or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of the Corporation having any preference, priority or parity as to dividends, liquidation, redemption, conversion, voting, assets or other rights superior to or on parity with any such preference or priority of the Series A Preferred Stock;

(iv) apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Preferred Stock (except Series A Preferred Stock pursuant Article IV, Section C.5 below) or Common Stock (except for repurchases from employees, directors, consultants or other persons performing

services for the Corporation or any subsidiary pursuant to plans or other agreements approved by the Board of Directors pursuant to which the Corporation has the option to repurchase such shares upon the occurrence of certain events at a price per share equal to the original issue price thereof);

(v) take any other action that may materially adversely affect the Series A Preferred Stock;

(vi) materially change the fundamental nature of the business of the Corporation;

(vii) effect any sale, lease, license, assignment, transfer or other conveyance of all or substantially all of the assets of the Corporation or any of its subsidiaries, or any consolidation, merger, share exchange or other combination involving the Corporation which results in the disposition to a single person or group of affiliated persons of greater than fifty percent (50%) of the voting power of the Corporation;

(viii) amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or Bylaws to the extent it materially and adversely affects the Series A Preferred Stock;

(ix) the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary;

(x) authorize the Corporation to sell its securities in a public offering other than in a Qualified IPO (as hereinafter defined);

(xi) incur indebtedness or issue any securities evidencing indebtedness in excess of Two Hundred Fifty Thousand Dollars (\$250,000); or

(xii) declare, pay or set aside funds for the payment of, any dividend, or other distribution other than the Base Series A Dividend.

4. Conversion. The holders of the shares of Series A Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**");

(a) Right to Convert. Each share of each series 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. Each share of each series of Preferred Stock shall be converted into the number of fully paid and non-assessable shares of Common Stock as is determined by dividing the "**Conversion Price**" per share in effect for such series of Preferred Stock at the time of conversion into the "**Conversion Value**" per share for such series of Preferred Stock. The number of shares of Common Stock into which each share of such series of Preferred Stock is convertible is hereinafter referred to as the "**Conversion Rate**." The initial Conversion Price per share of Series A Preferred Stock shall be One Dollar (\$1.00).

The initial Conversion Price of the Series A Preferred Stock shall be subject to adjustment as set forth in Article IV, Section C.4(d). The Conversion Value per share of Series A Preferred Stock shall be One Dollar (\$1.00). Any accrued or declared but unpaid dividends on the shares of Series A Preferred Stock may be converted into the number of shares of Common Stock equal to the amount of the accrued or declared but unpaid dividends divided by the Conversion Price per share of Series A Preferred Stock.

(b) Automatic Conversion. Each share of each series of Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Conversion Rate for such series of Preferred Stock, (i) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "**Securities Act**"), at a public offering price (prior to underwriters' discounts and expenses) equal to or exceeding Seven Dollars (\$7.00) per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) and the aggregate gross proceeds to the Corporation (before deduction for underwriters' discounts and expenses relating to the issuance) of which equal or exceed Thirty Million Dollars (\$30,000,000) (a "**Qualified IPO**"); or (ii) at the option of holders of a majority of the shares of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of shares of any series of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of shares of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the shares of Preferred Stock shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such sale of securities. Notwithstanding that any certificate for shares of any series of Preferred Stock to be converted in a mandatory conversion pursuant to Section C.4(b) shall not have been surrendered as of the date fixed for conversion, each holder of shares of each series of Preferred Stock shall thereafter be treated for all purposes as the record holder of the number of shares of Common Stock issuable to such holder upon conversion.

(d) Conversion Price Adjustments of Preferred Stock. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as set forth

below.

(i) Special Definitions. For purposes of this Article IV, Section C.4(d), the following definitions apply:

(1) **“Additional Shares of Common Stock”** shall mean all shares of Common Stock issued (or, pursuant to Article IV, Section C.4(d)(iv), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Series A Preferred Stock;

(B) to officers, directors or employees of, or consultants to, the Corporation pursuant to stock option or stock purchase plans or agreements or other stock incentive plans or arrangements on terms approved by the Board of Directors, but not exceeding an aggregate of 1,382,500 shares of Common Stock, subject to adjustment for all subdivisions and combinations, which may be issued from time to time without the prior approval of the holders of Series A Preferred Stock;

(C) as a dividend or distribution to all holders of Series A Preferred Stock or as a dividend or distribution to all holders of Common Stock or Series A Preferred Stock as authorized herein;

(D) upon conversion of warrants issued to banks or other lenders or to equipment lessors in connection with a loan or equipment lease approved by the Board of Directors;

(E) in connection with business combinations or corporate partnering agreements approved by the Board of Directors including the three (3) directors appointed by the holders of the Series A Preferred Stock; or

(F) for which adjustment of the Conversion Price for each affected series of Preferred Stock is made pursuant to Article IV, Section C.4(e).

(2) **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(3) **“Original Issue Date”** shall mean with respect to each series of Preferred Stock, the date on which shares of such series of Preferred Stock were first issued;

(4) **“Options”** shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price for any share of any series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Article IV, Section C.4(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior to, such issue.

(iii) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation, after the Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Article IV, Section C.4(d)(iv)) without consideration or for a consideration per share less than the Conversion Price with respect to any series of Preferred Stock in effect immediately prior to such issue, then and in such event, the Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all shares of Series A Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock immediately prior to such issuance and any outstanding Options had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(iv) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities 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, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities and Options, 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, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustments in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of shares of the Series A Preferred Stock;

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

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

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Article IV, Section C.4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Conversion Price of any series of Preferred Stock to an amount which exceeds the lower of (a) the Conversion Price for such series of Preferred Stock on the original adjustment date, or (b) the Conversion Price for such series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(5) in the case of any Options which expire by their terms not

more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price of any series of Preferred Stock shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (3) above; and

(6) if any such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price of each series of Preferred Stock which became effective on such record date shall be cancelled as of the close of business on such record date and shall instead be made on the actual date of issuance, if any.

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

(1) Cash and property. Such consideration shall:

(A) 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 or accrued dividends;

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

(C) 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 (A) and (B) above, as determined in good faith by the Board of Directors.

(2) 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 Article IV, Section C.4(d)(iv), relating to Options and Convertible Securities shall be determined by dividing:

(A) 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 designed to protect against dilution) 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

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion

or exchange of such Convertible Securities.

(e) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for each series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(f) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Article IV, Section C.4(e) above or a merger or other reorganization treated as a liquidation, dissolution or winding up of the Corporation under Article IV, Section C.2(c) above), the Conversion Price of the Series A Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that shares of Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock, or other securities or property, which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the shares of Series A Preferred Stock immediately before that change.

(g) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Article IV, Section C.4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of shares of each series of Preferred Stock against impairment.

(h) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price for any series of Preferred Stock pursuant to this Article IV, Section C.4, 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 such series of Preferred Stock a certificate executed by the Corporation's President or Chief Executive Officer 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 shares of any series of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for such series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of shares of such series of Preferred Stock.

(i) Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock (other than by purchase of shares of Common Stock of employees, officers or directors of, or consultants to, the Corporation pursuant to the termination of such person's status as such or pursuant to the Corporation's exercise of rights of first refusal with respect to its shares), whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any re-classification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge, consolidate or effect a share exchange or other combination with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of shares of each series of Preferred Stock:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and

(2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(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 on mandatory conversion of shares of any series of Preferred Stock pursuant hereto; 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) Reservation of Common 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 each series of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of each series 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 then outstanding shares of such series 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 stockholder approval of any necessary amendment to this Certificate of Incorporation.

(l) Fractional Shares. No fractional shares of Common Stock shall be issued upon the conversion of any share or shares of any series of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of any series of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

(m) Multiple Issuance Dates. Notwithstanding anything in this Article IV, Section C.4 to the contrary, in the event the Corporation issues shares of the same series of Preferred Stock on more than one date, the Conversion Price shall be adjusted only once for the issuance of shares of such series of Preferred Stock, such adjustment to occur upon the earlier of (i) one hundred twenty (120) days after the first issuance thereof, (ii) upon the final closing of the issuance thereof or (iii) immediately prior to any conversion or repurchase of such Preferred Stock.

(n) Notices. Any notice required by the provisions of this Article IV, Section C.4 to be given to the holders of shares of any series of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, or if sent by facsimile or delivered personally by hand or nationally recognized courier and addressed to each holder of record at such holder's address or facsimile number appearing in the records of the Corporation.

5. Redemption.

(a) Commencing on or after the fifth (5th) anniversary of the issuance of the Series A Preferred Stock, upon the affirmative vote of the holders of not less than two-thirds (2/3) of the then-outstanding shares of Series A Preferred Stock, the Corporation shall redeem, from any source of funds legally available therefor, the Series A Preferred Stock in three (3) equal annual installments of one-third (1/3) of the remaining outstanding shares of the Series A Preferred Stock commencing on the date which is one year from the notice of redemption (each a “**Redemption Date**”). The Corporation shall effect such redemptions on the applicable Redemption Dates by paying in cash in exchange for the shares of the Series A Preferred Stock to be redeemed a sum equal to the greater of (i) the Original Issue Price plus all accrued or declared but unpaid dividends on such shares or (ii) the fair market value of the shares of the Series A Preferred Stock as of the applicable Redemption Date as determined below (the “**Redemption**

Price”).

The fair market value shall be determined by the Board of Directors in good faith including the Director appointed by the holders of the Common Stock and a majority of the Directors appointed by the holders of the Preferred Stock; provided, however, that if the Director appointed by the holders of the Common Stock and the Directors appointed by the holders of the Preferred Stock are unable to agree as to the fair market value of the shares of Series A Preferred Stock, then the fair market value shall be determined by an appraiser appointed by the disinterested members of the Board of Directors.

Any redemption effected pursuant to this Article IV, Section C.5(a) shall be made on a pro-rata basis among the holders of the Series A Preferred Stock in proportion to the shares of the Series A Preferred Stock then held by them.

(b) At least fifteen (15) but no more than thirty (30) days prior to each Redemption Date written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of shares of each series of Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed (the “**Redemption Notice**”). Except as provided in Article IV, Section C.5(c), on or after the Redemption Date, each holder of shares of each series of Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of 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. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the payment of the Redemption Price, all rights of the holder of shares of any series of Preferred Stock designated for redemption in the Redemption Notice as holder of share of Preferred Stock shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of each series of Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of each series of Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of shares of each series of Preferred Stock. The shares of any series of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of each series of Preferred Stock such funds will immediately be used to

redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date, but which it has not redeemed.

6. No Reissuance of Preferred Stock. No share or shares of any series of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares of such series shall be canceled and retired and returned to shares of undesignated Preferred Stock which the Corporation shall be authorized to issue subject to the terms herein.

ARTICLE V

A director of the Corporation shall not be personally liable to the Corporation or otherwise for monetary damages for breach of any duty as a director, except for liability with respect to (i) acts or omissions that the director at the time of such breach knew or believed were clearly in conflict with the best interests of the Corporation; (ii) any liability under N.C. Gen. Stat. § 55-8-33 for unlawful distributions; or (iii) any transaction from which the director derived an improper personal benefit. If the North Carolina Business Corporation Act is amended to authorize corporate action for further eliminating or limiting 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 North Carolina Business Corporation Act, as so amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VI

The provisions of Article 9 and Article 9A of the North Carolina Business Corporation Act, entitled “The North Carolina Shareholder Protection Act” and “The North Carolina Control Share Acquisition Act,” respectively, shall not be applicable to the Corporation.

ARTICLE VII

The shareholders of the Corporation shall have no right to cumulate their votes for the election of directors.