

CORRECTED AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ASEMPRA TECHNOLOGIES, INC.

The undersigned president of Asempra Technologies, Inc. hereby certifies:

1. The name of the company is Asempra Technologies, Inc.
2. The company was incorporated under the laws of the State of Delaware on November 10, 2003 under the name Asempra Technologies, Inc.
3. The Amended and Restated Certificate of Incorporation which was filed in the Office of the Delaware Secretary of State on September 18, 2007 requires correction as permitted by Section 103 of the Delaware General Corporation Law in that a provision regarding the absence of fractional shares following the conversion of Series A Preferred Stock and Series B Preferred Stock into Series 1 Preferred Stock was omitted.
4. The document in corrected form is attached hereto as Exhibit A.

IN WITNESS WHEREOF, the undersigned has executed this Corrected Amended and Restated Certificate of Incorporation this 19th day of September, 2007.

Name: /s/ Gary Gysin
Title: President

EXHIBIT A

Amended and Restated Certificate of Incorporation

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ASEMPRA TECHNOLOGIES, INC.**

Asempra Technologies, Inc., a corporation organized and existing under the Delaware General Corporation Law (the "corporation"), hereby certifies as follows:

1. The corporation was incorporated on November 10, 2003, under the name Asempra Technologies, Inc., pursuant to the Delaware General Corporation Law.
2. This Amended and Restated Certificate of Incorporation has been duly adopted by the corporation's Board of Directors and duly approved by the written consent of a majority of the corporation's stockholders in accordance with Sections 242 and 245 of the Delaware General Corporation Law, and restates, integrates and further amends the provisions of the Certificate of Incorporation of the corporation.
3. The Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the corporation is Asempra Technologies, Inc. (the "Company" or this "corporation").

ARTICLE II

The registered agent and the address of the registered office of the corporation in the State of Delaware are:

National Corporate Research LTD.
615 South Dupont Highway
Dover, Delaware 19901

ARTICLE III

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

ARTICLE IV

A. This corporation is authorized to issue two classes of shares, designated "Common Stock" and "Preferred Stock," respectively. The number of shares of Common Stock authorized to be issued is 93,794,702 shares. The number of shares of Preferred Stock authorized to be issued is 93,794,702 shares, of which 27,794,702 are designated as "Series A Preferred Stock;" 50,000,000 are designated as "Series B Preferred Stock;" 8,000,000 are designated as "Series 1 Preferred Stock;" and 8,000,000 are designated as "Series 1-A Preferred Stock." The Preferred Stock shall have a par value of \$.0001 per share and the Common Stock shall have a par value of \$.0001 per share.

B. Immediately upon this Restated Certificate becoming effective pursuant to the Delaware General Corporation Law (the "Effective Time") and without any further action required by the Company or its stockholders, each one hundred (100) then-outstanding shares of Common Stock or of a series of Preferred Stock of the Company (each a "Pre-Split Share") will be combined, automatically and without further action on the part of the Company or the holders thereof, into one (1) share of the same series and/or class (each a "Post-Split Share") as the one hundred (100) Pre-Split Shares so combined (the "Reverse Split"). In addition, each Pre-Split Share issuable upon the exercise of any then-outstanding stock options, warrants or other right to acquire a Pre-Split share of the Company will be reclassified and converted, automatically and without further action required on the part of the Company or the respective holders thereof, into one-one hundredth (1/100) of a Post-Split Share. The Reverse Split will be effected on a certificate by certificate basis. Certificates dated as of a date prior to the Effective Time, represent a number of Post-Split Shares equal to the product of the number of Pre-Split Shares as is reflected on the face of such certificates multiplied by one-one hundredth (1/100) and rounded down to the nearest whole number. The Company shall not be obliged to issue new certificates evidencing the Post-Split Shares outstanding as a result of the Reverse Split unless and until the certificates evidencing the Pre-Split shares held by a holder are delivered to the Company, or such holder notifies the Company that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificate.

C. All share and per share amounts set forth in this Restated Certificate which would be affected by the Reverse Split have been appropriately adjusted to reflect the Reverse Split. No fractional share interests will result from the Reverse Split. Stockholders who otherwise would have been entitled to receive any fractional interests of a Post-Split Share shall, in lieu of receipt of such fractional interest, be entitled to receive from the Company an amount in cash equal to the product obtained by multiplying \$2.00 by such fractional interest resulting from the Reverse Split of Pre-Split Shares of Common Stock and \$2.00 by such fractional interest resulting from the Reverse Split of Pre-Split Shares of Preferred Stock. Every share number, dollar amount and other provision contained in this Restated Certificate has been adjusted for the Reverse Split and there shall be no further adjustment made to such share numbers, dollar amounts or other provisions, except in the case of any stock splits, stock dividends, reclassifications and the like occurring after the date of filing of this Amended and Restated Certificate of Incorporation. All references to "Common Stock" and "Preferred Stock" that follow in this Amended and Restated Certificate of Incorporation shall be to the Post-Split shares of Common Stock and Post-Split shares of Series A Preferred Stock, Post-Split shares of

Series B Preferred Stock, Post-Split shares of Series 1 Preferred Stock and Post-Split Shares of Series 1-A Preferred Stock, respectively.

D. Immediately following the Reverse Split, and without any further action required by the Company or its stockholders, (i) each share of Series A Preferred Stock, then issued and outstanding, and each share of Series A Preferred Stock issuable upon the exercise of any then-outstanding stock options, warrants or other right to acquire Series A Preferred Stock of the Company will be reclassified and converted, automatically and without further action required on the part of the Company or the respective holders thereof, into 4.104 shares of Series 1 Preferred Stock and (ii) each share of Series B Preferred Stock, then issued and outstanding, and each share of Series B Preferred Stock issuable upon the exercise of any then-outstanding stock options, warrants or other right to acquire Series B Preferred Stock of the Company will be reclassified and converted, automatically and without further action required on the part of the Company or the respective holders thereof, into 5.159 shares of Series 1 Preferred Stock (with the conversions described in subsections (i) and (ii) above hereinafter referred to as the "Reclassification"). No fractional share interests will result from the Reclassification. Stockholders who otherwise would have been entitled to receive any fractional interests of a share following the Reclassification shall, in lieu of receipt of such fractional interest, be entitled to receive from the Company an amount in cash equal to the product obtained by multiplying \$2.00 by such fractional interest resulting from the Reclassification. No further adjustment of any preference or price set forth in this Article IV shall be made as a result of the Reclassification, as all share amounts, amounts per share and per share numbers set forth in this Restated Certificate have been adjusted to reflect the Reclassification. Following the Reclassification, no shares of Series A Preferred Stock or Series B Preferred Stock shall be outstanding or authorized for issuance.

E. Any stock certificate that, immediately prior to the Effective Time, represented shares of Series A Preferred Stock or Series B Preferred Stock will, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent the number of shares of Series 1 Preferred Stock, as appropriate, determined by applying the conversion provisions of the Reclassification.

F. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote (voting together as a single class on an as-if-converted basis).

ARTICLE V

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

1. Definitions. For purposes of this Article V, the following definitions shall apply:

1.1 "Acquiring Stockholder" means a stockholder or affiliated group of stockholders of the Company, prior to a Combination Transaction, which (i) merges or combines with the Company in a Combination Transaction, or (ii) owns or controls, directly or indirectly, a

majority of another entity that merges or combines with the Company in a Combination Transaction.

1.2 "Board" shall mean the Board of Directors of the Company.

1.3 "Combination Transaction" shall mean (A) any corporate reorganization, consolidation, merger or similar transaction or series of related transactions to which the Company is a constituent corporation or party, as a result of which the voting securities of the Company (*other than* securities held by an "Acquiring Stockholder") that are outstanding immediately prior to the consummation do not represent, or are not converted into, securities of the surviving entity (or the parent of the surviving entity) which, immediately after the consummation of the transaction or series of related transactions, together comprise at least a majority of the total voting power of the surviving entity (or its parent entity, if applicable), including securities of the surviving entity (or its parent entity, if applicable) held by the Acquiring Stockholder; or (B) any transaction or series of related transactions to which this corporation is a party in which in excess of fifty percent (50%) of this corporation's voting power is transferred; provided that Combination Transaction shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by this corporation or any successor or indebtedness of this corporation is cancelled or converted or a combination thereof.

1.4 "Company" shall mean this corporation.

1.5 "Common Stock" shall mean the Common Stock, par value \$0.0001, of the Company.

1.6 "Common Stock Dividend" shall mean a stock dividend or other distribution declared and paid on outstanding shares of Common Stock that is payable in shares of Common Stock.

1.7 "Dividend Rate" shall mean \$0.12 per share for the Series 1 Preferred Stock and for the Series 1-A Preferred Stock (in each case as appropriately adjusted for any stock split, stock dividend, combination, subdivision, recapitalization or the like with respect to those shares).

1.8 "Original Issue Date," as to the Series 1 and Series 1-A Preferred Stock shall mean the date of the Company's first issuance of shares of Series 1 Preferred Stock.

1.9 "Original Issue Price" shall mean \$2.00 per share for the Series 1 Preferred Stock and for the Series 1-A Preferred Stock (in each case, as appropriately adjusted for any stock split, stock dividend, combination, subdivision, recapitalization or the like with respect to those shares).

1.10 "Permitted Repurchases" shall mean the repurchase by the Company of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Company or a subsidiary that are subject to restricted stock purchase agreements or stock option exercise agreements under which the Company has the option to repurchase such shares at the original purchase price per share.

1.11 "Preferred Stock" shall mean the shares of Series 1 and Series 1-A Preferred Stock.

2. Dividend Rights.

2.1 Dividend Preference. In each calendar year, the holders of the then outstanding Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefor, noncumulative dividends at the annual Dividend Rate for those respective series of Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock in the calendar year. No dividends shall be paid with respect to the Common Stock and this corporation shall not make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Series 1 and Series 1-A Preferred Stock, respectively, first shall have been paid or declared and set apart for payment to the holders of those series of Preferred Stock, respectively, during that calendar year except for Permitted Repurchases. In the event dividends are paid on any share of Common Stock, the corporation shall pay an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. Payments of any dividends to the holders of each series of Preferred Stock shall be paid pro rata, on an equal priority, pari passu basis according to their respective dividend preferences as set forth herein. Dividends on the Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of any series of the Preferred Stock by reason of the fact that the Company shall fail to declare dividends on such series of Preferred Stock in the amount of the respective annual Dividend Rate for each such series or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

2.2 Dividend Participation.

After payment of the dividends set forth in paragraph 2.1, any additional dividends or distributions shall be distributed among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were then converted into Common Stock as provided in Section 6.3.

2.3 Non-Cash Dividends. Whenever a dividend provided for in paragraph 2.1 shall be payable in property other than cash, the value of the dividend shall be deemed to be the fair market value of the property as determined in good faith by the Board.

3. Liquidation Rights. In the event of any Liquidation Event (as defined below), the funds and assets of the Company that may be legally distributed to the Company's stockholders (the "Available Funds and Assets") shall be distributed to stockholders in the manner set forth in this Section 3:

3.1 Liquidation Event. For purposes of this Section 3, a "Liquidation Event" shall be deemed to include: (i) the liquidation, dissolution or winding up of the Company; (ii) the

Company's sale, exclusive and perpetual license, or other disposition of all or substantially all of its assets, and (iii) any Combination Transaction.

3.2 Liquidation Preferences.

(a) Upon a Liquidation Event, the holders of each share of Series 1 and Series 1-A Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets to the holders of Common Stock or other junior security of the Company by reason of their ownership thereof, an amount per share equal to the Original Issue Price for those respective series of Preferred Stock, plus all declared but unpaid dividends thereto.

(b) If upon any Liquidation Event the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series 1 and Series 1-A Preferred Stock of their full preferential amount described in subparagraph 3.2(a), then all of the remaining Available Funds and Assets shall be distributed ratably among the holders of the then outstanding Series 1 and Series 1-A Preferred Stock in proportion to the full preferential amounts each holder would be entitled to receive under subparagraph 3.2(a).

(c) If any Available Funds and Assets remain after the payment or distribution to the holders of the Series 1 and Series 1-A Preferred Stock of their full preferential amounts described above in subparagraph 3.2(a) hereof, then all such remaining Available Funds and Assets shall be distributed ratably among the holders of the then outstanding Common Stock and Series 1 and Series 1-A Preferred Stock on an as-if-converted to Common Stock basis until such holders of Series 1 and Series 1-A Preferred Stock have received pursuant to Section 3.2(a) above and this Section 3(c), an aggregate amount per share of Series 1 and Series 1-A Preferred Stock equal to one-and-one-half (1.5) times the Original Issue Price; thereafter, any Available Funds and Assets that remain shall be distributed ratably among the holders of the then outstanding Common Stock only.

(d) Notwithstanding the above, for purposes of determining the amount that each holder of shares of Series 1 and Series 1-A Preferred Stock is entitled to receive with respect to a Liquidation Event, each holder thereof shall be deemed to have converted all shares of those series into shares of Common Stock immediately prior to the Liquidation Event (regardless of whether the holder actually so converted the shares), if the conversion would result in the holder receiving in the aggregate with respect to those shares an amount greater than the amount that the holder would receive if the holder did not convert the shares into Common Stock.

3.3 Non-Cash Consideration. If any assets of the Company distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of those assets shall be their fair market value as determined in good faith by the Board, provided that any securities to be distributed to stockholders in a Liquidation Event shall be valued as follows:

(a) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(i) If the securities are then traded on a national securities exchange or The NASDAQ Stock Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the twenty (20) trading days ending three (3) days prior to the distribution (or such other period as is set forth in the agreement or agreements setting forth the terms of the Combination Transaction).

(ii) If actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid prices over the twenty (20) trading days ending three (3) days prior to the closing (or such other period as is set forth in the agreement or agreements setting forth the terms of the Combination Transaction).

(iii) If there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined hereof in subparagraphs (a)(i), (ii) or (iii) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

(c) The determination of the Board for purposes of subparagraphs (a)(iii) and (b), or provisions for determining value which supersede those set forth in subparagraphs (a) and (b), may be set forth in the form of definitive agreements governing the Liquidation Event that are adopted with the consent of the Board.

3.4 Notice of Liquidation Event. The Company shall give each holder of record of Preferred Stock written notice of an impending Liquidation Event not later than twenty (20) days prior to the date of any meeting of stockholders called to approve the transaction, or twenty (20) days prior to the closing of the transaction, whichever is earlier. The notice shall describe the material terms and conditions of the impending transaction and the provisions of paragraph 3.2, and the Company thereafter shall give those holders prompt notice of any material changes. The transaction shall not take place sooner than twenty (20) days after the Company has given notice of the transaction or sooner than five (5) days after the Company has given notice of any material changes, provided, that subject to compliance with applicable law, the delay and notice periods may be shortened with the written consent of holders of a majority of the outstanding shares of Preferred Stock, voting together as a single class and not as separate series, and on an as-converted basis. In addition, if the transaction is approved by written consent of stockholders without a meeting, then, unless the consents of all holders of Preferred Stock have been solicited in writing, the Company shall give prompt written notice of the final approval of the transaction to any such holder who did not provide written consent.

4. Redemption.

4.1 Request of Holders. If the Company shall receive, at any time after the fifth (5th) anniversary of the Original Issue Date, the written request of holders of a majority of the

outstanding shares of Series 1 and Series 1-A Preferred Stock (taken together as a single class and on an as-converted basis), then, to the extent it may lawfully do so, the Company shall redeem the shares of Series 1 and Series 1-A Preferred Stock as provided in this Section 4, from funds legally available for this purpose, by paying the applicable Redemption Price to the holders of the shares of Series 1 and Series 1-A Preferred Stock to be redeemed. All redemptions effected pursuant to this Section 4 shall be made on a pro rata basis among the holders of the Series 1 and Series 1-A Preferred Stock in proportion to the aggregate Redemption Price that each such holder of Series 1 and Series 1-A Preferred Stock is entitled to receive pursuant to this Section 4 on the applicable Redemption Date.

4.2 Definitions.

- (a) "Redemption Date" means each date for redemption of Redemption Shares specified in paragraph 4.3.
- (b) "Redemption Shares" means the shares of Series 1 and Series 1-A Preferred Stock to be redeemed on any Redemption Date.
- (c) "Redemption Notice" means the notice distributed to holders of Redemption Shares before a Redemption Date pursuant to paragraph 4.4.
- (d) "Redemption Price" means \$3.00 per share with respect to the Series 1 and Series 1-A Preferred Stock (in each case as appropriately adjusted for any stock split, stock dividend, combination, subdivision, recapitalization or the like with respect to the applicable series), less the amount of any dividends theretofore distributed to the applicable Redemption Shares.

4.3 Redemption Installments.

- (a) On the Redemption Date set forth in the Redemption Notice (which date shall in no event be later than ninety (90) days following the date of the request for redemption by holders of Series 1 and Series 1-A Preferred Stock), the Company shall redeem one-third (1/3) of the total number of shares of Series 1 and Series 1-A Preferred Stock outstanding of record at the close of business on the business day immediately preceding the date of the applicable Redemption Notice (less the number of shares, if any, of Series 1 and Series 1-A Preferred Stock converted into Common Stock after the date of the applicable Redemption Notice and prior to this Redemption Date).
- (b) On the first anniversary of the initial Redemption Date, the Company shall redeem one-half (1/2) of the total number of shares of Series 1 and Series 1-A Preferred Stock outstanding of record at the close of business on the business day next preceding the date of the applicable Redemption Notice (less the number of shares, if any, of Series 1 and Series 1-A Preferred Stock converted into Common Stock after the date of the applicable Redemption Notice and prior to this Redemption Date.)
- (c) On the second anniversary of the initial Redemption Date, the Company shall redeem all of the shares of Series 1 and Series 1-A Preferred Stock which shall remain outstanding on that date.

4.4 Redemption Notice. At least fifteen (15) but no more than thirty (30) days prior to each Redemption Date, the Company shall mail written notice, 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 the Series 1 and Series 1-A Preferred Stock to be redeemed, at the address last shown on the records of the Company for the holder, notifying the holder of the redemption to be effected, specifying the number of Redemption Shares to be redeemed from the holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained, and calling upon the holder to surrender to the Company, in the manner and at the place designated, the stock certificate or certificates representing the requisite number of Redemption Shares.

4.5 Mechanics.

(a) Except as provided in paragraph 4.6, on or after the Redemption Date, each holder of Series 1 and Series 1-A Preferred Stock to be redeemed shall surrender to the Company the certificate or certificates representing the Redemption Shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of those shares shall be payable to the order of the person whose name appears on the certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, the Company shall issue the holder a new certificate representing the unredeemed shares.

(b) On or prior to each Redemption Date, the Company shall deposit the Redemption Price of all Redemption Shares designated for redemption in the Redemption Notice, and not yet redeemed or converted, with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust company to publish the notice of redemption thereof and pay the Redemption Price for the shares to their respective holders on or after the Redemption Date, upon receipt of notification from the Company that the holder has surrendered his, her or its share certificate to the Company pursuant to subparagraph 4.5(a). As of the date of the deposit (even if prior to the Redemption Date), the deposit shall constitute full payment of the Redemption Shares to their holders, and from and after the date of the deposit the Redemption Shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to those shares and shall have no rights with respect thereto except the rights to receive from the bank or trust company payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor, and the right to convert such shares as provided in Section 6. The instructions also shall provide that any moneys deposited by the Company pursuant to this subparagraph 4.5(b) for the redemption of shares thereafter converted into shares of the Company's Common Stock pursuant to Section 6 prior to the Redemption Date shall be returned to the Company forthwith upon the conversion. The balance of any moneys deposited by the Company pursuant to this subparagraph 4.5(b) remaining unclaimed at the expiration of one (1) year following the Redemption Date thereafter shall be returned to the Company upon its request expressed in a duly adopted resolution of its Board of Directors.

4.6 Rights of Stockholders. From and after any Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of the Redemption Shares designated for redemption in the applicable Redemption Notice (except the right to receive the Redemption Price in respect of the Redemption Shares without interest upon surrender of the certificate or certificates therefor), shall cease with respect to those Redemption Shares, and those Redemption Shares shall be cancelled and shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever; and the authorized number of shares of Preferred Stock and of the applicable series automatically shall be reduced correspondingly. If and to the extent the funds of the Company legally available are insufficient to redeem the total number of Redemption Shares to be redeemed on the applicable Redemption Date, those funds that are legally available will be used to redeem the maximum possible number of the Redemption Shares ratably based on the portion of the aggregate Redemption Price payable to them. The shares of Series 1 and Series 1-A Preferred Stock not redeemed shall remain outstanding and entitled to all the right and privileges provided herein. At any time thereafter when additional funds of the Company are legally available for the redemption of any Redemption Shares which the Company had become obligated to redeem on the applicable Redemption Date but has not redeemed, those funds, to the extent available, immediately will be used to redeem the balance of the Redemption Shares which the Company has become obliged to redeem on any Redemption Date but which it has not redeemed. Holders of Redemption Shares shall have no right to bring a legal action against the Company for failure to pay any such installment to the extent funds are not legally available therefor, provided the Company complies with the provisions of this paragraph 4.6.

5. Voting Rights.

5.1 Common Stock. Except as provided by law, each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

5.2 Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock could be converted pursuant to the provisions of Section 6 hereof at the record date for the determination of the stockholders entitled to vote on the matters or, if no such record date is established, the date the vote is taken or any written consent of stockholders is solicited. Fractional votes shall not be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded down to the nearest whole number.

5.3 General. Subject to paragraphs 5.1, 5.2 and 5.4 of this Section 5, each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as provided in Section 8 hereof or as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together as a single, combined class and not as separate classes.

5.4 Election of Directors.

(a) The holders of Series 1 and Series 1-A Preferred Stock voting together as a single, separate class and on an as-converted basis, shall be entitled to elect three (3) members of the Board 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 Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

(c) The holders of the Common Stock and of the Preferred Stock, voting together as a single, combined class and on an as-converted basis, shall be entitled to elect all remaining members of the Board 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) During such time or times that the Company is subject to Section 2115(b) of the California General Corporation Law, a director elected by a respective class pursuant to subparagraph 5.4(a)-(e), may be removed from the Board of Directors, without cause, only by the affirmative vote of the holders of at least a majority of the outstanding shares of the applicable class entitled to vote, provided that unless the entire Board is removed, no individual director elected by the applicable class may be removed when the votes of that class cast against that director's removal, or not consenting in writing to the removal, would be sufficient to elect that director if voted cumulatively at an election at which the same total number of votes of the applicable class were cast (or, if the action is taken by written consent, all shares of the applicable class entitled to vote were voted) and the entire number of directors of the respective class were then being elected.

6. Conversion Rights. The outstanding shares of Preferred Stock shall be convertible into Common Stock as follows:

6.1 Optional Conversion.

(a) Each outstanding share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time or from time to time, into fully paid and nonassessable shares of Common Stock as provided in paragraph 6.3.

(b) Each holder of Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock or Common Stock, and shall give written notice to the Company there, that the holder elects to convert the same, and shall state therein the number of shares of Preferred Stock to be converted. Thereupon the Company promptly shall issue and deliver to that holder a certificate or certificates for the number of shares of Common Stock to which the holder is entitled upon the conversion and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), any declared and unpaid dividends on the shares of Preferred Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the

Board as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Preferred Stock. The conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the certificate or certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon the conversion shall be treated for all purposes as the record holder of the shares of Common Stock on that date. Until certificates for the shares of the Preferred Stock so converted have been delivered to the Company for exchange for certificates representing shares of Common Stock, those certificates shall be deemed to represent the shares of Common Stock into which the shares of Preferred Stock have been converted.

(c) If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), the conversion may, at the option of any holder tendering the Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to the offering, in which event the conversion shall not be deemed to have occurred until immediately prior to that closing.

6.2 Automatic Conversion.

(a) Each share of Preferred Stock automatically shall convert into fully paid and nonassessable shares of Common Stock as provided in paragraph 6.3 upon the earlier of (i) the date indicated by vote or written consent or agreement of the holders of a majority of the outstanding shares of the Preferred Stock, voting together as a single, separate class and on an as-converted basis, or pursuant to subparagraph 6.2(c) if no date is specified by the holders; or (ii) immediately upon the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the Company (other than a registration relating solely to a transaction under Rule 145 under the Securities Act or any successor thereto, or to an employee benefit plan of the Company) which results in aggregate gross proceeds of not less than \$20,000,000, before deduction of underwriters' discounts and commissions, and the public offering price of which per share is equal to at least \$4.00 (as adjusted for any stock split, combination, recapitalization or the like occurring after the Original Issue Date), and which offering results in the Common Stock being listed for trading on a national securities exchange or The Nasdaq National Market.

(b) Upon the occurrence of any event specified in subparagraph 6.2(a), the applicable outstanding shares of Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders thereof, and whether or not the certificates representing those shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon the conversion unless those the certificates evidencing the converted shares of Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that those certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with those certificates. The holders of the Preferred Stock so converted shall surrender the certificates representing the shares so converted (or in the case of a lost certificate, a customary indemnity agreement) at the office of the Company or any transfer agent for the Preferred Stock or Common Stock.

Thereupon, there shall be issued and delivered, to and in the name of the holder as shown on the surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date of the automatic conversion. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 6.1(b).

(c) If the conversion occurs through the vote of the holders of the outstanding shares of a class or series pursuant to clause (i) of subparagraph 6.2(a), then, unless otherwise indicated, the conversion shall be deemed to occur at the close of business on the day written notice of the election has been received by the Company, and the person or persons entitled to receive shares of Common Stock upon the conversion shall be treated for all purposes as the record holder or holders of the shares of Common Stock on that date. Until certificates for the shares of the Preferred Stock so converted have been delivered to the Company for exchange for certificates representing shares of Common Stock, those certificates shall be deemed to represent the shares of Common Stock into which the shares of Preferred Stock have been converted.

6.3 Conversion Price. Each share of Preferred Stock shall be convertible in accordance with paragraph 6.1 or paragraph 6.2 hereof, as applicable, into the number of shares of Common Stock that results from dividing the Original Issue Price for the applicable series of Preferred Stock by the conversion price for that series of Preferred Stock that is in effect at the time of conversion (the "Conversion Price"). The initial Conversion Price for the Series 1 Preferred Stock shall be the Original Issue Price for the Series 1 Preferred Stock. The initial Conversion Price for the Series 1-A Preferred Stock shall be the initial Conversion Price established upon the initial conversion of any shares of Series 1 Preferred Stock into Series 1-A Preferred Stock pursuant to paragraph 7.2. The Conversion Prices for the Series 1 and Series 1-A Preferred Stock shall be subject to adjustment from time to time as provided below.

6.4 Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined), the Conversion Price of the Series 1 and Series 1-A Preferred Stock, respectively, shall be adjusted by multiplying the Conversion Price of the applicable series of Preferred Stock in effect immediately prior to the Common Stock Event by a fraction, (a) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to the Common Stock Event, and (b) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after the Common Stock Event; and the product so obtained shall thereafter be the Conversion Price for that series of Preferred Stock. The Conversion Price for that series of Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term "Common Stock Event" shall mean (i) a Common Stock Dividend without a corresponding dividend or other distribution to holders of Preferred Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock without a corresponding subdivision of the Preferred Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock without a corresponding combination of the Preferred Stock.

6.5 Adjustments for Other Dividends and Distributions. If at any time after the Original Issue Date the Company pays a dividend or makes another distribution to the holders of the Common Stock payable in securities or assets of the Company other than shares of Common

Stock (other than a dividend or distribution provided for in Section 2 or Section 3 hereof), then in each such event provision shall be made so that the holders of the Series 1 and Series 1-A Preferred Stock shall receive, upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities or assets of the Company which they would have received had their Series 1 and Series 1-A Preferred Stock, as applicable, been converted into Common Stock on the date of the event (or record date, as applicable) and had they thereafter, during the period from the date of the event (or record date, as applicable) to and including the conversion date, retained the securities receivable by them as aforesaid during that period, subject to all other adjustments called for during that period under this Section 6 with respect to the rights of the holders of the Preferred Stock or with respect to the other securities by their terms.

6.6 Adjustment for Reclassification. If at any time after the Original Issue Date the Common Stock issuable upon conversion of the Series 1 and Series 1-A Preferred Stock, as applicable, shall be changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 6 or in Section 3), then thereafter each holder of Series 1 and Series 1-A Preferred Stock shall have the right to convert that Preferred Stock into the kind and amount of stock and other securities and property receivable upon the recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which the shares of the applicable series of Preferred Stock could have been converted immediately prior to the recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to the other securities or property by the terms thereof.

6.7 Adjustment for Merger or Consolidation. In case of any consolidation or merger of the Company with or into another corporation (other than a Combination Transaction pursuant to Section 3.2), each share of Series 1 and Series 1-A Preferred Stock thereafter shall be convertible into the kind and amount of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Company deliverable upon conversion of the Series 1 and Series 1-A Preferred Stock, as applicable, would have been entitled upon the consolidation or merger; and appropriate adjustment (as determined in good faith by the Board) shall be made in the application of this Section 6 with respect to the rights and interest thereafter of the holders of the Series 1 and Series 1-A Preferred Stock (including provisions with respect to changes in and other adjustments of the applicable Conversion Price), to the end that those provisions thereafter shall apply, as nearly as they reasonably may, in relation to any shares of stock or other property thereafter deliverable upon conversion of the Series 1 and Series 1-A Preferred Stock.

6.8 Sale of Shares Below Conversion Price.

(a) **Adjustment Formula.** If at any time after the Original Issue Date, the Company issues or sells, or by the provisions of this paragraph 6.8 is deemed to have issued or sold, Additional Shares of Common Stock (as hereinafter defined) for an Effective Price (as hereinafter defined) that is less than the Conversion Price then in effect for the Series 1 Preferred Stock (but not the Series 1-A Preferred Stock), immediately prior to the issue or sale (a "Dilutive Issuance"), then, and in each such case, the Conversion Price for the Series 1 Preferred Stock,

shall be reduced, as of the close of business on the date of the issue or sale, to the price obtained by multiplying the Conversion Price for the applicable series in effect immediately prior to the Dilutive Issuance by a fraction:

- (i) The numerator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding (as hereinafter defined) immediately prior to the issue or sale of Additional Shares of Common Stock plus (B) the quotient obtained by dividing the Aggregate Consideration Received (as hereinafter defined) by the Company for the total number of Additional Shares of Common Stock so issued or sold (or deemed issued and sold) by the Conversion Price for the applicable series in effect immediately prior to the issue or sale; and
- (ii) The denominator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding immediately prior to the issue or sale plus (B) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).

(b) Certain Definitions. For the purpose of making any adjustment required under subparagraph 6.8(a) in the Conversion Price for the Series 1 Preferred Stock:

- (i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company (or deemed to have been issued by the Company) after the Original Issue Date, whether or not subsequently reacquired or retired by the Company, other than shares of Common Stock (or options, warrants or rights therefor) issued or issuable or reserved for issuance:
 - a. upon a Common Stock Event or other issuance for which adjustments are made to the conversion rights or Conversion Prices of the Preferred Stock pursuant to paragraph 6.4, 6.5 or 6.6 hereof;
 - b. up to 2,257,098 shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are unanimously approved by the Board; *provided, however,* that such amount shall be increased to reflect any shares of Common Stock (i) not issued pursuant to the rights, agreements, option or warrants ("Unexercised Options") as a result of the termination of such Unexercised Options or (ii) reacquired by the Company from employees, directors or consultants at cost (or the lesser of cost or fair market value) pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company; and provided further that said number of shares may be increased with unanimous Board approval;

c. to banks, financial institution lenders or equipment lessors pursuant to loan or lease agreements, commercial credit arrangements, equipment financings or commercial property lease transactions, which were entered into prior to the Original Issue Date or which are entered into for purposes other than primarily equity financing, and provided that the issuance of shares therein has been approved unanimously by the Board;

d. in connection with any bona fide merger, acquisition, licensing or strategic partnership transactions provided that the issuance of shares therein has been unanimously approved by the Board; or

e. in a transaction approved by holders of at least a majority of the outstanding shares of the Series 1 Preferred Stock, voting together as a single class, in the approval of which the holders expressly waive the right to any adjustment of the Conversion Price under this paragraph 6.8.

(ii) The "Aggregate Consideration Received" by the Company for any issue or sale (or deemed issue or sale) of securities shall be computed as:

a. the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with the issue or sale and without deduction of any expenses payable by the Company (to the extent the consideration consists of cash);

b. the fair value of property other than cash, as determined in good faith by the Board (to the extent the consideration consists of property other than cash); and

c. the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to the Additional Shares of Common Stock, Convertible Securities or Rights or Options (if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both).

(iii) "Common Stock Equivalents Outstanding" shall mean the sum of (A) the number of shares of Common Stock of the Company that are outstanding at the time in question, plus (B) the number of shares of Common Stock of the Company issuable upon conversion of all shares of Preferred Stock and other Convertible Securities that are outstanding at the time in question, plus (C) the number of shares of Common Stock of the Company issuable upon the exercise of Rights or Options (as hereafter defined) that are outstanding (whether or not then vested, earned or immediately exercisable) at the time in question, assuming the full

conversion or exchange into Common Stock of all such Rights or Options, including those that are rights or options to purchase or acquire Convertible Securities convertible into or exercisable or exchangeable for Common Stock.

(iv) "Convertible Securities" shall mean stock or other securities convertible into, or exercisable or exchangeable for, shares of Common Stock (other than Rights or Options (as hereafter defined)).

(v) The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Company under this paragraph 6.8, into the Aggregate Consideration Received, or deemed to have been received, by the Company under this paragraph 6.8 for the issue of the Additional Shares of Common Stock.

(vi) "Rights or Options" shall mean all outstanding warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities, whether or not then vested, earned or immediately exercisable.

(c) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of the Preferred Stock required under this paragraph 6.8, if the Company issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of the Rights or Options and/or the conversion or exchange of the Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for a series of Preferred Stock, then the Company shall be deemed to have issued, at the time of the issuance of the Rights or Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of the Rights or Options or Convertible Securities upon their issuance (assuming vesting in full and the satisfaction of any conditions to exercisability, convertibility, exchangeability or otherwise and computed without regard to the potential future adjustments under antidilution or similar protective clauses) and to have received, as the Aggregate Consideration Received for the issuance of the shares, an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of the Rights or Options or Convertible Securities, plus, in the case of Rights or Options, the minimum amounts of consideration, if any, payable to the Company upon the exercise in full of the Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion or exchange thereof (other than by cancellation of liabilities or obligations evidenced by the Convertible Securities, to the extent the same reflect advances that were treated as consideration received by the Company upon the issuance thereof); provided that:

(i) If the minimum amounts of consideration cannot be ascertained, but are a function of antidilution or similar protective clauses,

then the Company shall be deemed to have received the minimum amounts of consideration without reference to those clauses.

(ii) If the minimum amount of consideration payable to the Company upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the figure to which the minimum amount of consideration is reduced; provided that the readjustment shall not apply to any conversions of Preferred Stock occurring prior to the reduction.

(iii) If the minimum amount of consideration payable to the Company upon the exercise of the Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Company upon the exercise of the Rights or Options or the conversion or exchange of the Convertible Securities; provided that the readjustment shall not apply to any conversions of Preferred Stock occurring prior to the increase and, provided further, that the Effective Price shall not be increased above the Conversion Price that would otherwise be in effect had the Dilutive Issuance to which the readjustment applies never occurred.

No further adjustment of the Conversion Price, adjusted upon the issuance of Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any Rights or Options or the conversion or exchange of any Convertible Securities. If any such Rights or Options, or the conversion rights represented by any Convertible Securities, shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of the Rights or Options or Convertible Securities (or readjusted as provided above) shall be readjusted to the Conversion Price that would have been in effect had the adjustment been made on the basis that the only shares of Common Stock issued were the shares of Common Stock, if any, that actually were issued on the exercise of the Rights or Options or rights of conversion or exchange of the Convertible Securities, and those shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon the exercise, for the granting of all such Rights or Options, whether or not exercised, plus the consideration, if any, received by the Company for issuing or selling all Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company on the conversion or exchange of the Convertible Securities (other than by cancellation of liabilities or obligations evidenced by the Convertible Securities, to the extent the same reflect advances that were treated as consideration received by the Company upon the issuance thereof), provided that the readjustment shall not apply to conversions of Preferred Stock occurring prior to the expiration, and provided further that the Conversion Price shall not be increased above the Conversion Price that otherwise would be in effect had the Dilutive Issuance to which the readjustment applies never occurred.

6.9 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for a series of Preferred Stock, the Company, at its expense, shall cause its Chief Financial Officer to compute the adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing the adjustment or readjustment in reasonable detail, and shall mail the certificate, by first class mail, postage prepaid, to each registered holder of the Preferred Stock so affected at the holder's address as shown in the Company's books. Upon the request of any holder of Preferred Stock, the Company shall furnish to the holder a like certificate setting forth any previous adjustment or readjustment, the Conversion Price for the applicable series of Preferred Stock then in effect, and the number of shares of Common Stock (and the amount, if any, of other property) that at the time would be received upon conversion of a share of the applicable series.

6.10 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay the holder cash equal to the product of the fraction multiplied by the Common Stock's fair market value as of the date of conversion as determined in good faith by the Board. Whether or not fractional shares are issuable upon the conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon the aggregate conversion.

6.11 Reservation of Stock Issuable Upon Conversion. The Company 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, a sufficient number of its shares of Common Stock to effect the conversion of all outstanding shares of Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not suffice for the conversion of all then outstanding shares of Preferred Stock, then the Company shall take the corporate action required in the good faith judgment of the Board upon advice of the Company's legal counsel, to increase the authorized but unissued shares of Common Stock to a number of shares sufficient for that purpose.

6.12 Status of Converted Stock. The shares of Preferred Stock converted pursuant to this Section 6 shall be cancelled and shall not be reissuable by the Company and the authorized number of shares of Preferred Stock and of the applicable series automatically shall be reduced correspondingly.

6.13 Notices.

(a) In the event of any taking by the Company of a record of the holders of Common Stock or any series of Preferred Stock for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, the Company shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which the record is to be taken and the amount and character of the dividend or distribution.

(b) Any notice required by the provisions of this Section 6 to be given to the holders of shares of the Preferred Stock shall be deemed given upon the earlier of (i) actual receipt, or

(ii) one (1) day after deposit with a nationally recognized express courier, or (iii) three (3) days after deposit with the United States mail (by certified or registered mail, return receipt requested, postage prepaid) addressed to each holder of record at the address of the holder appearing on the books of the Company.

7. Purchase Right; Special Mandatory Conversion.

7.1 Purchase Right.

(a) In the event that the Company shall propose to sell any securities ("Equity Securities") having voting rights in the election of the Company's Board of Directors or any security convertible into or exercisable for the foregoing (other than those referred to in subparagraph 7.1(c)), the Company shall provide written notice of the proposed sale (the "Notice") to each holder of Series 1 Preferred Stock. The Notice shall state: (A) the Company's bona fide intention to sell the Equity Securities; (B) the number of Equity Securities proposed to be sold; (C) the per share price of the Equity Securities proposed to be sold; (D) other material terms of the offering; and (E) the maximum number of Equity Securities that the holder may purchase assuming pro rata participation.

(b) Each holder of Series 1 Preferred Stock shall have the right (the "Purchase Right") to purchase the holder's "pro rata participation" comprising that number of shares of Equity Securities stated in the Notice, determined by multiplying the total number of Equity Securities proposed to be sold by the Company by a fraction, the numerator of which is the number of shares of Common Stock (including all shares of Common Stock issuable or issued upon conversion of the Preferred Stock or upon the exercise of outstanding warrants or options) held or deemed to be held by the holder as of the date of the Notice, and the denominator of which is the total number of shares of Common Stock Equivalents Outstanding (as defined in subparagraph 6.8(b)(iii)) on the date of the Notice. A holder shall exercise the Purchase Right by delivering to the Company written notice of exercise within twenty (20) days after the effective date of the Notice as calculated pursuant to paragraph 6.13. A holder of Series 1 Preferred Stock shall have the right to apportion its Purchase Rights among itself and its affiliates in such proportions as it shall deem appropriate.

(c) Equity Securities shall not include, and the Notice and Purchase Right provisions of subparagraphs 7.1(a) and (b) shall not apply to:

(i) Any securities excluded from the definition of Additional Shares of Common Stock in subparagraph 6.8(b) (applying the respective numbers for each series with respect to the numbers of shares stated in subparagraph 6.8(b)(i)(b)), and

(ii) Any securities issued when there remain outstanding less than an aggregate of 1,000,000 shares of Series 1 Preferred Stock (as appropriately adjusted for any stock split, stock dividend, combination, subdivision, recapitalization or the like with respect to those shares), and

(iii) Any securities to be offered in or after a public offering in which shares of Preferred Stock will convert automatically pursuant to subparagraph 6.2(a)(ii); and

(iv) Any securities issued upon conversion or exercise of any outstanding convertible or exercisable securities, as long as the Purchase Rights established by Section 7(b) were complied with, waived, or were inapplicable pursuant to this Section 7(c) with respect to the initial sale or grant by this corporation; and

(v) Any securities issued in a transaction approved by holders of at least a majority of the outstanding shares of Series 1 Preferred Stock, in the approval of which the holders expressly waive the Purchase Right with respect to the issuance.

(d) If any holder of Series 1 Preferred Stock (in combination with its affiliates, as provided in subparagraph 7.1(e)) shall fail to exercise the Purchase Right to the full extent of its pro rata participation amount of Equity Securities within the 20-day exercise period, then during the ninety (90) days following the expiration of the 20-day exercise period, the Company shall have the right to offer the remaining unsubscribed portion of the Equity Securities to any person or persons at a price not less than, and on terms no more favorable to the offeree than, those specified in the Notice. If the Company does not enter into an agreement for the sale of the Equity Securities within that 90-day period, the Purchase Right shall be revived and the Equity Securities shall not be offered unless first reoffered to the persons who are then holders of Series 1 Preferred Stock in accordance with this paragraph 7.1.

(e) For purposes of aggregation, apportioning and exercise of the Purchase Right by or among affiliates under subparagraphs 7.1(b), 7.1(d) and 7.2(a), "affiliate" shall include (i) any constituent partner or former partner of a stockholder which is a partnership, (ii) a wholly-owned subsidiary of a stockholder which is a corporation, or a parent corporation which owns all of the capital stock of the stockholder, (iii) any constituent member or former member of a stockholder which is a limited liability company, (iv) any entity that, within the meaning of the Securities Act, controls or is controlled by or under common control with the stockholder, (v) any affiliated venture capital fund of a stockholder which is a venture capital fund, and (vi) a family member or trust for the benefit of the stockholder or family member of the stockholder, in the case of a stockholder who is an individual.

7.2 Mandatory Conversion.

(a) At any time after the date of the Original Issue Date, if:

(i) The Purchase Right of the holders of Series 1 Preferred Stock shall arise with respect to an offering of Equity Securities having an Effective Price (as calculated in accordance with subparagraph 6.8(b)(v) that is less than the Conversion Price for the Series 1 Preferred Stock in effect immediately preceding the issuance of the Equity Securities, and the Company shall comply with its notice obligations set forth in

subparagraph 7.1(a) with respect to the offering or the notice obligations have been waived (a "Mandatory Offering"); and

(ii) The Board shall find that the Equity Offering is principally for bona fide equity financing purposes in which cash is received by this corporation or indebtedness of this corporation is cancelled or converted or a combination thereof; and

(iii) Any holder of Series 1 Preferred Stock (a "Non-Participating Holder") shall fail to exercise the holder's Purchase Right in full with respect to the Mandatory Offering (either directly or through one or more affiliates), other than in the case of waiver by the holder of the Purchase Right at the written request of the Company;

then, effective upon the closing of the sale of the Equity Securities in the Mandatory Offering, all shares of Series 1 Preferred Stock held by the Non-Participating Holder shall convert automatically into an equivalent number of shares of Series 1-A Preferred Stock, which shall have an initial Conversion Price equal to the Conversion Price that was in effect for the Series 1 Preferred Stock immediately preceding the closing of the sale of the Equity Securities in the Mandatory Offering.

(b) Upon conversion of the shares of Series 1 Preferred Stock pursuant to this paragraph 7.2, the shares of Series 1 Preferred Stock so converted shall be cancelled and shall not be subject to reissuance by the Company, and the authorized number of shares of Series 1 Preferred Stock automatically shall be reduced correspondingly. The Company shall not issue any shares of Series 1-A Preferred Stock other than pursuant to this paragraph 7.2.

(c) The conversion of the shares of Series 1 Preferred Stock held by Non-Participating Holders into Series 1-A Preferred Stock shall occur without the need for any further action by the Non-Participating Holders, and whether or not the certificates representing those shares are surrendered to the Company or its transfer agent; *provided, however,* that the Company shall not be obligated to issue certificates evidencing the shares of Series 1-A Preferred Stock issuable upon the conversion unless the certificates evidencing the converted shares of Series 1 Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that those certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with those certificates. Upon surrender of the certificates representing the shares so converted (or in the case of a lost certificate, a customary indemnity agreement) at the office of the Company or any transfer agent for the Preferred Stock, there shall be issued and delivered, to and in the name of the holder as shown on the surrendered certificate or certificates, a certificate or certificates for the number of shares of Series 1-A Preferred Stock into which the shares of Series 1 Preferred Stock surrendered were convertible on the date of the automatic conversion. Until certificates for the shares of the Series 1 Preferred Stock so converted have been delivered to the Company for exchange for certificates representing shares of Series 1-A Preferred Stock those certificates shall be deemed to represent the shares of Series 1-A Preferred Stock into which the shares Series 1 Preferred Stock have been converted.

(d) Upon the issuance of any shares of Series 1-A Preferred Stock, the Company shall use reasonable efforts to take the corporate actions required, including amending its certificate of incorporation, (i) cancel all authorized shares of Series 1-A Preferred Stock that thereafter remain unissued; (ii) to create and reserve for issuance upon conversion of the Series 1 Preferred Stock a new series of Preferred Stock equal in number to the number of shares of Series 1-A Preferred Stock so cancelled (less the number of any shares of Series 1 Preferred Stock that then have been converted into Common Stock), which series shall be designated Series 1-B Preferred Stock, with the designations, powers, preferences and rights and the qualifications, limitations and restrictions identical to those then applicable to the Series 1-A Preferred Stock, except that the initial Conversion Price for the shares of Series 1-B Preferred Stock, when issued, shall be the Series 1 Conversion Price in effect immediately prior to the first closing of a sale of Equity Securities in a Mandatory Offering immediately preceding the initial issuance of any shares of Series 1-B Preferred Stock; and (iii) to amend the provisions of this paragraph 7.2, to provide that any subsequent automatic conversion pursuant to the terms of this paragraph 7.2 shall be into shares of Series 1-B Preferred Stock as so contemplated. The Company shall take the same actions with respect to the Series 1-B Preferred Stock and each series of Preferred Stock subsequently authorized pursuant to this paragraph 7.2 upon initial issuance of shares of the last such series to be authorized.

(e) The Company shall at all times reserve and keep available out of its authorized but unissued shares of Preferred Stock, solely for the purpose of effecting the conversion of the shares of the Series 1 Preferred Stock, a sufficient number of its shares of Preferred Stock to effect the conversion of all outstanding shares of Preferred Stock pursuant to this paragraph 7.2. If at any time the number of authorized but unissued shares of Preferred Stock shall not suffice for such conversion of all then outstanding shares of Preferred Stock, then the Company shall take the corporate action required in the good faith judgment of the Board upon advice of the Company's legal counsel, to increase the authorized but unissued shares of Preferred Stock to a number of shares sufficient for that purpose.

8. Restrictions and Limitations.

8.1 Preferred Stock. As long as any shares of Series 1 or Series 1-A Preferred Stock remain outstanding, the Company shall not (by amendment, merger, consolidation or otherwise), without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Series 1 and Series 1-A Preferred Stock, voting together as a single class (on an as-converted basis as provided in paragraph 5.2):

(a) Amend or change its certificate of incorporation or Bylaws; or

(b) Authorize or issue, or obligate itself to issue, any equity security (including any security convertible into or exercisable for any equity security) with dividend, voting, conversion, redemption or liquidation preferences senior to, or on parity with, the Series 1 Preferred Stock or Series 1-A Preferred Stock (other than Series 1-B and subsequent series of Preferred Stock contemplated pursuant to subparagraph 7.2(d)); or

(c) Increase or decrease the total number of authorized shares of Preferred Stock or Common Stock, except for the automatic reduction of the number of authorized shares of Preferred Stock (or the applicable series thereof) pursuant to a provision of this Article V; or

(d) Consummate any Liquidation Event as defined in paragraph 3.1; or

(e) Increase or decrease the authorized number of directors; or

(f) Incur any debt for borrowed money in excess of \$500,000 in any single transaction or related series of related transactions; or

(g) Effect any acquisition of the capital stock of another entity which results in the consolidation of that entity into the results of operations of the Company, or acquisition of all or substantially all of the assets of another entity; or

(h) Declare or authorize the payment of any dividend or distribution on any shares of the Company's capital stock; or

(i) Redeem or repurchase any shares of stock, or apply any of the Company's assets to the redemption or repurchase of the Company's capital stock, other than Permitted Repurchases as contemplated by paragraph 1.10 and redemption as contemplated by Section 4; or

(j) Authorize, adopt or create any program, plan or arrangement for the grant of stock options or the issuance of restricted stock, other than any stock option or stock purchase plan, contract or arrangement in effect on the Original Issue Date or subsequently approved unanimously by the Board; or increase the number of shares available pursuant to such a stock option or stock purchase plan, contract or arrangement so in effect or so approved.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

1. Except as otherwise set forth in this Certificate of Incorporation, the Board of Directors is expressly authorized to adopt, amend or repeal the by-laws of the corporation, provided, however, that the by-laws may only be amended in accordance with the provisions thereof.

2. Elections of directors need not be by written ballot unless the by-laws of the corporation shall so provide.

3. The books of the corporation may be kept at such place within or without the State of Delaware as the by-laws of the corporation may provide or as may be designated from time to time by the Board of Directors.

ARTICLE VII

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

2. Indemnification. To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which the Delaware General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with the 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 Delaware General Corporation Law, subject only to limits created by applicable law (statutory or non-statutory) with respect to actions for breach of duty to this corporation, and others.

3. Amendment.

(a) If the Delaware Corporation Law hereafter is amended to further eliminate or limit the liability of directors, then the liability of a director of the corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Delaware General Corporation Law.

(b) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to the amendment, repeal or adoption of an inconsistent provision.

ARTICLE VIII

In connection with repurchases by this corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which the corporation has the option to repurchase those shares at the original purchase price upon the occurrence of certain events, such as the termination of employment, Sections 502, 503 and 506 of the California Corporations Code shall not apply in all or in part with respect to those repurchases.

[Signature page follows.]

IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its President as of this 18th day of September, 2007.

/s/ Gary Gysin

Gary Gysin
President and Chief Executive Officer