

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

MERGER

EFFECTIVE DATE:

08/29/2005

CONVEYING PARTY DATA

Name	Execution Date
SAND CODEX, LLC	08/29/2005

RECEIVING PARTY DATA

Name:	SEADRAGON SOFTWARE, INC.
Street Address:	5447 LEARY AVENUE NW
City:	SEATTLE
State/Country:	WASHINGTON
Postal Code:	98107

PROPERTY NUMBERS Total: 10

Property Type	Number
Application Number:	10790253
Application Number:	11438467
Application Number:	10803010
Application Number:	11082556
Application Number:	11141958
Application Number:	11172393
Application Number:	11208826
Patent Number:	7042455
Application Number:	11247513
Application Number:	11110497

CORRESPONDENCE DATA

Fax Number: (816)421-5547

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

PATENT

500124858

REEL: 017921 FRAME: 0001

OP \$400.00 10790253

Phone: 816-474-6550
Email: ssutton@shb.com
Correspondent Name: JOHN S. GOLIAN
Address Line 1: SHOOK, HARDY & BACON LLP
Address Line 2: 2555 GRAND BLVD.
Address Line 4: KANSAS CITY, MISSOURI 64108-2613

ATTORNEY DOCKET NUMBER:

MFCP.129350

NAME OF SUBMITTER:

JOHN S. GOLIAN

Total Attachments: 28

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Delaware

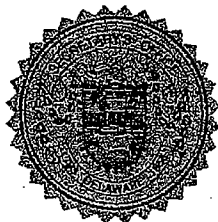
PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"SAND CODEX, LLC", A DELAWARE LIMITED LIABILITY COMPANY,
WITH AND INTO "SEADRAGON SOFTWARE, INC." UNDER THE NAME OF
"SEADRAGON SOFTWARE, INC.", A CORPORATION ORGANIZED AND EXISTING
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED
IN THIS OFFICE THE TWENTY-NINTH DAY OF AUGUST, A.D. 2005, AT
2:10 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE
KENT COUNTY RECORDER OF DEEDS.



4009443 8100M

050710122

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4125696

DATE: 08-30-05

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AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER (the "Agreement") is made as of August 29, 2005, by and between SAND CODEX, LLC, a Delaware limited liability company (the "LLC"), and SEADRAGON SOFTWARE, INC., a Delaware corporation doing business as SEADRAGON (the "Corporation") (the LLC and the Corporation are hereinafter collectively referred to as the "Constituent Companies"), with reference to the following facts:

RECITALS:

A. The Board of Directors and stockholders of the Corporation, and the Board of Managers and Members of the LLC have determined that it is desirable and in the best interests of such Companies, their stockholders and unit holders that the LLC be merged with and into the Corporation on the terms and conditions set forth in this Agreement and the Board of Directors and the stockholders of the Corporation, and the Board of Managers and Members of the LLC have approved this Agreement.

B. Following the Merger (as that term is defined below), the Corporation, will be the surviving corporation and shall succeed to all of the rights and properties of the LLC and shall be subject to all of the debts and obligations of the LLC (including, but not limited to, the obligations to prepare and file all tax and information returns and to pay any tax liability due and payable) in the same manner as if the Corporation had itself incurred such debts and obligations.

NOW, THEREFORE, in order to implement the foregoing, the parties agree as follows:

1. **RECITALS.** The recitals set forth above are hereby incorporated into this Agreement by this reference.
2. **THE CONSTITUENT COMPANIES.**

2.1 **SAND CODEX LLC.** The LLC is a Delaware limited liability company and, immediately prior to the Merger, has an authorized capital of One Thousand (1,000) membership units, which are divided into three (3) classes, those units commonly referred to as "Class A Units" (the "LLC Class A Units"), of which Eighty (80) units are issued and outstanding, those units commonly referred to as "Class B Units" (the "LLC Class B Units"), of which Four Hundred Twenty (42) units are issued and outstanding, and those units commonly referred to as "Class C Units" (the "LLC Class C Units"), of which nine (9) units are issued and outstanding. Sand Codex LLC was formed on April 21, 2003.

2.2 **SEADRAGON SOFTWARE, INC.** The Corporation is a corporation duly organized and existing under the laws of the State of Delaware and, immediately prior to the Merger, has an authorized capital of One Hundred Thousand shares (100,000) shares of Common Stock (the "Corporation Common Stock"), of which one (1) share is issued and outstanding. The Corporation was incorporated under the laws of the State of Delaware on August 2, 2005.

3. **MERGER.** At the Effective Time (as defined in SECTION 4 below), the LLC shall be merged with and into the Corporation (the "Merger") pursuant to the provisions of, and with the effect provided in, Section 264 of the General Corporation Law of Delaware (the "DGCL"). The Corporation shall be the surviving corporation of the Merger (the "Surviving Corporation"). The separate entity existence of the LLC shall cease at the Effective Time. The corporate existence of the Surviving Corporation shall continue unimpaired and unaffected by the Merger.

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4. **EFFECTIVE TIME OF THE MERGER.** The Merger shall become effective at the time of the filing in the office of the Secretary of State of the State of Delaware of a copy of the Certificate of Merger, a copy of which is set forth in EXHIBIT A hereto, which is sometimes referred to as the "Effective Time."

5. **EFFECT OF THE MERGER.** At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the LLC shall vest in the Surviving Corporation, and all debts, liabilities and duties of the LLC shall become the debts, liabilities and duties of the Surviving Corporation.

6. **CHARTER DOCUMENTS OF SURVIVING CORPORATION.** At the Effective Time, the Certificate of Incorporation of the Corporation shall be amended and restated in full to read as set forth on EXHIBIT B attached hereto. The Bylaws of the Corporation as in effect immediately prior to the Effective Time of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

7. **DIRECTORS AND OFFICERS.** The officers and directors of the Corporation holding office at the Effective Time shall hold office in the Surviving Corporation until removed as provided by law or until the election and qualification of their respective successors.

8. **CONVERSION OF SHARES.**

8.1 **LLC CAPITAL UNITS.** Upon the Effective Time, each unit of the LLC outstanding immediately prior to the Effective Time shall be converted by reason of the Merger and without any action on the part of the holders thereof be converted into shares of capital stock of the Corporation as follows:

(a) every one (1) unit of the issued and outstanding LLC Class A Units shall be converted into ten thousand (10,000) shares of Corporation Series A Preferred Stock; and

(b) every one (1) unit of the issued and outstanding LLC Class B Units shall be converted into ten thousand (10,000) shares of Corporation Common Stock;

(c) every one (1) unit of the issued and outstanding LLC Class C Units shall be converted into ten thousand (10,000) shares of Corporation Common Stock;

8.2 **LLC OPTIONS.** At the Effective Time, there shall be no outstanding options to purchase Units issued or outstanding.

8.3 **CORPORATION CAPITAL STOCK.** Upon the Effective Time, each share of Common Stock of the Corporation capital stock issued and outstanding immediately prior to the Effective Time shall be canceled and returned to the status of authorized but unissued Common Stock.

9. **ASSUMPTION OF OBLIGATIONS.** At the Effective Time, the corporate franchises and existence and rights of the LLC shall be merged into the Corporation and the Corporation shall, as the Surviving Corporation, be fully vested therewith. At the Effective Time, (a) the Surviving Corporation shall possess all of the rights, privileges, powers and franchises and be subject to all of the restrictions, disabilities and duties of each of the Constituent Companies; (b) all property, real, personal and mixed, and all debts due to either of the Constituent Companies on whatever account, including stock subscriptions, and all other things in action and all and every other interest of or belonging to or due to each of the Constituent Companies, shall be taken and deemed to be transferred to and vested in the Surviving Corporation without further act or deed; (c) all property, rights,

privileges, powers, franchises and all and every other interest of each of the Constituent Companies shall be thereafter as effectually the property of the Surviving Corporation as they had been of the respective Constituent Companies; and (d) the title to any real property, or any interest therein, which has vested by deed or otherwise in either of the Constituent Companies, shall neither revert to the transferor thereof nor be in any way impaired by reason of the Merger. The Surviving Corporation shall assume and thenceforth be responsible and liable for all the liabilities and obligations of each of the Constituent Companies, (including, but not limited to, the obligations to prepare and file, or to cause to be prepared and filed, all tax and information returns for each Constituent Company and to pay any tax liability of each Constituent Company determined to be due and payable).

10. UNIT HOLDER AND STOCKHOLDER APPROVAL. The terms and conditions of the Merger and this Agreement have been approved by the requisite vote of the unit holders of the LLC and the stockholders of the Corporation.

11. DISSENTERS' RIGHTS. Notwithstanding any provision of this Agreement to the contrary, any LLC Units held by a holder who has demanded and perfected such holder's right for appraisal of such units in accordance with Delaware law and who, as of the Effective Time, has not effectively withdrawn or lost such right to appraisal ("Dissenting Units"), if any, shall not be converted into the shares of the Corporation, but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Units pursuant to Delaware law. The LLC shall give the Corporation prompt notice of any demand received by the LLC to require the LLC to purchase the LLC Units, and the Corporation shall have the right to direct and participate in all negotiations and proceedings with respect to such demand. The LLC agrees that, except with the prior written consent of the Corporation, or as required under Delaware law, it will not voluntarily make any payment with respect to, or settle or offer to settle, any such purchase demand. Each holder of Dissenting Units (a "Dissenting Unit Holder") who, pursuant to the provisions of Delaware law, becomes entitled to payment of the fair value for LLC Units shall receive payment therefor (but only after the value therefor shall have been agreed upon or finally determined pursuant to such provisions).

12. MARKET STAND-OFF. During such period as is determined by the Company's underwriters (not to exceed (i) one hundred eighty (180) days (or such lesser period as the underwriters may request) following the effective date the first registration statement filed by the Company under the Securities Act of 1933, as amended (the "Act") covering Common Stock or other securities to be sold on the Company's behalf to the public in an underwritten initial public offering, or (ii) such longer period, not to exceed a total of two hundred fifteen (215) days following the effective date of such registration, as may be requested by the underwriters to comply with regulatory restrictions on the publication of research reports (including, but not limited to, NASD Rule 2711)), any holder of Corporation Common Stock or Corporation Preferred Stock shall not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of (other than to a donee who agrees to be similarly bound) any securities of the Corporation, however or whenever acquired (other than those included in the registration) without the prior written consent of such underwriters.

13. CERTIFICATE LEGENDS. The shares of Corporation Common Stock and Corporation Preferred Stock to be issued pursuant to this Agreement shall not have been registered and shall be characterized as "restricted securities" under the federal securities laws, and under such laws such shares may be resold without registration under the Act, only in certain limited circumstances. Each certificate evidencing shares of Corporation Common Shares to be issued shall bear the following legend, in addition to any legends required by state securities laws:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE
NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933,

AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD FOLLOWING THE EFFECTIVE DATE OF THE ISSUER'S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

Notwithstanding the foregoing, no opinion of counsel shall be required upon the conversion of Shares of the Corporation's Preferred Stock into shares of the Corporation's Common Stock.

14. SURRENDER AND DELIVERY OF CERTIFICATES

14.1 EXCHANGE PROCEDURES. At and after the Effective Time, the Corporation shall make available, and each Unit holder of the LLC immediately prior to the Effective Time shall be entitled to receive, upon surrender to the Corporation or its representatives of any certificates evidencing such units of the LLC (the "Certificates") for cancellation, the aggregate shares of Corporation Common Stock or Corporation Preferred Stock, as the case may be, into which such shares have been converted in the Merger, and upon such surrender of each Certificate and delivery by the Corporation of the shares of Corporation Common Stock or Corporation Preferred Stock in exchange therefor, such Certificates shall be cancelled. Until so surrendered, each Certificate shall be deemed for all corporate purposes to evidence only the right to receive upon such surrender the aggregate number of units of Corporation Common Stock into which such shares represented thereby shall have been converted.

14.2 NO FURTHER OWNERSHIP RIGHTS IN LLC UNITS. The Corporation Common Stock and Corporation Preferred Stock delivered upon the surrender for exchange of shares of LLC Class A Units, LLC Class B Units, or LLC Class C Units as the case may be, in accordance with the terms hereof (including any dividends, distributions or cash paid in lieu of fractional shares) shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of respective LLC Class A Units, LLC Class B Units, or LLC Class C Units, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of LLC Class A Units, LLC Class B Units, or LLC Class C Units which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided herein.

14.3 LOST, STOLEN OR DESTROYED CERTIFICATES. In the event any Certificates shall have been lost, stolen or destroyed, the Corporation shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, such Corporation Common Stock or Corporation Preferred Stock as may be required pursuant to SECTION 8 hereof; provided, however, that the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the

owner of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against the LLC or the Surviving Corporation with respect to the Certificates alleged to have been lost, stolen or destroyed.

15. **TAX AND ACCOUNTING CONSEQUENCES.** The parties hereto agree to prepare, or cause to be prepared, all federal and state tax returns, other governmental filings and applicable books and records in accordance with such treatment and to take such other actions as may be necessary so that such transactions will be so treated.

16. **TAKING OF NECESSARY ACTION; FURTHER ACTION.** Each of the Corporation and the LLC will take all such reasonable and lawful action as may be necessary or desirable in order to effectuate the Merger in accordance with this Agreement as promptly as possible. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the LLC and the Corporation, the officers and directors of the LLC and the Corporation are fully authorized, in the name of their respective corporations or otherwise, to take, and will take, all such lawful and necessary action, so long as such action is not inconsistent with this Agreement.

17. **FURTHER ACTS.** From time to time, as or when requested by the Surviving Corporation, or by its successors or assigns, each of the Constituent Companies shall execute and deliver or cause to be executed and delivered all such other instruments, and shall take or cause to be taken all such further or other actions, as the Surviving Corporation, or its successors or assigns, may deem necessary or desirable in order to vest in and confirm to the Surviving Corporation and its successors and assigns, title to and possession of all of the property, rights, privileges, powers and franchises referred to in SECTION 9 above and otherwise to carry out the intent and purposes of this Agreement, *provided that this SECTION 17 is not intended and shall not be construed to require the Surviving Corporation to assume or be liable for any debts or obligations (whether fixed or contingent) other than the fixed and contingent debts and obligations of the LLC immediately prior to the Effective Time of the Merger.*

18. **AMENDMENT.** The parties hereto, by mutual consent of the LLC Board of Managers and the Corporation Board of Directors, may amend, modify or supplement this Agreement in such manner as may be agreed upon by them in writing at any time before or after the adoption and approval of this Agreement by the shareholders of the Constituent Companies. If any amendment, modification or supplement changes any of the principal terms of this Agreement, then said amendment, modification or supplement to this Agreement shall be approved by the LLC Board of Managers and the Corporation Board of Directors of each of the Constituent Companies and by the Unit holders and stockholders of each of the Constituent Companies who approved this Agreement.

19. **ABANDONMENT.** Subject to the rights of third parties under any contracts relating thereto, this Agreement may be abandoned by the action of the Board of Directors and the Board of Managers of the Constituent Companies at any time before or after approval or adoption of this Agreement by the stockholders or the unit holders of the Constituent Companies, notwithstanding favorable action on the Merger by the shareholders or the unit holders of either Constituent Company, but not later than the Effective Time.

20. **MISCELLANEOUS**

20.1 **ADDRESS OF SURVIVING CORPORATION.** The address of the Surviving Corporation for purposes of the delivery of notices regarding any matter relating to the Merger and the transactions contemplated in this Agreement is as follows:

SeaDragon Software, Inc.
Attn: President
5447 Leary Avenue, NW
Seattle, Washington 98107

20.2 COUNTERPARTS. This Agreement may be executed in one or more counterparts, and each such counterpart hereof shall constitute but one agreement.

20.3 DESCRIPTIVE HEADINGS. The descriptive headings in this Agreement are included for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

20.4 GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware as applied to agreements between Delaware residents made and to be performed entirely within the State of Delaware.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, each of the parties hereto, pursuant to authority granted by its Board of Directors and Board of Managers, respectively, has caused this Agreement of Merger to be executed on its behalf as of the day and year first above written.

SAND CODEX, LLC, a Delaware limited liability company

SEADRAGON SOFTWARE, INC., a Delaware corporation doing business as SEADRAGON


By:


Blaise Agüera y Arcas, President

By:


Blaise Agüera y Arcas, Secretary

By:


Blaise Agüera y Arcas, President

By:

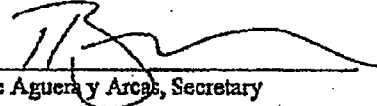

Blaise Agüera y Arcas, Secretary

EXHIBIT A

CERTIFICATE OF MERGER

CERTIFICATE OF MERGER
OF
SAND CODEX, LLC, A DELAWARE LIMITED LIABILITY COMPANY
INTO
SEADRAGON SOFTWARE, INC., A DELAWARE CORPORATION

Pursuant to Title 8, Section 264(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is SeaDragon Software, Inc., a Delaware corporation doing business as SeaDragon, and the name of the limited liability company being merged into this surviving corporation is Sand Codex, LLC, a Delaware limited liability company.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by the surviving corporation and the merging limited liability company.

THIRD: The name of the surviving corporation is SeaDragon Software, Inc.

FOURTH: The merger is to become effective on August 29, 2005.

FIFTH: The Amended and Restated Certificate of Incorporation of the surviving corporation shall be the certificate of incorporation of SeaDragon Software, Inc.

SIXTH: The Agreement of Merger is on file at 5447 Leary Avenue, NW, Seattle, Washington, 98107, the principal place of business of the surviving corporation.

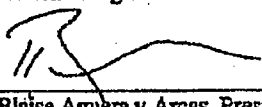
SEVENTH: A copy of the Agreement of Merger will be furnished by the corporation on request, without cost, to any stockholder of any constituent corporation or member of any constituent limited liability company.

[Signatures appear on the following page.]

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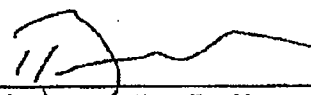
IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer, the 29 day of August, 2005.

SEADRAGON SOFTWARE INC., a Delaware corporation doing business as SEADRAGON

By: 
Blaise Aguerre y Arcas, President

By: 
Blaise Aguerre y Arcas, Secretary

SAND CODEX, LLC, a Delaware limited liability company

By: 
Blaise Aguerre y Arcas President

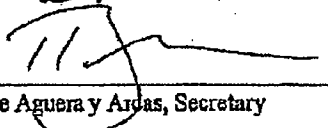
By: 
Blaise Aguerre y Arcas, Secretary

EXHIBIT B

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

SEADRAGON SOFTWARE, INC.

SEADRAGON SOFTWARE, INC., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is SEADRAGON SOFTWARE, INC., and the original Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on August 2, 2005.

2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of this Corporation to read as set forth below.

3. The text of the Restated Certificate of Incorporation is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

The name of this corporation is SeaDragon Software, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 615 South DuPont Highway, City of Dover, County of Kent, State of Delaware 19901. The name of its registered agent at such address is National Corporate Research, Ltd.

ARTICLE III

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

ARTICLE IV

(A) Classes of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is nineteen million six hundred seventy-eight thousand six hundred thirty-two (19,678,632) shares, each with a par value of \$0.001 per share. Fifteen million (15,000,000) shares shall be Common Stock and four million six hundred seventy-eight thousand six hundred thirty-two (4,678,632) shares shall be Preferred Stock.

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(B) Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation (the "Restated Certificate") may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of eight hundred thousand (800,000) shares. The second series of Preferred Stock shall be designated "Series B-1 Preferred Stock" and shall consist of one million nine hundred eighty-one thousand one hundred thirty-two (1,981,132) shares. The third series of Preferred Stock shall be designated "Series B-2 Preferred Stock" and shall consist of one million eight hundred ninety-seven thousand five hundred (1,897,500) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

1. Dividend Provisions. The holders of shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, on a pari passu basis and prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Series A Preferred Stock or Common Stock of the Corporation, at the rate of (a) \$0.0848 per share per annum on each outstanding share of Series B-1 Preferred Stock, and (b) \$0.0806 per share per annum on each outstanding share of Series B-2 Preferred Stock, in each case, as adjusted for stock splits, stock dividends, reclassifications, and the like, payable quarterly when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. After payment of such dividends, any additional dividends shall be distributed among the holders of Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

2. Liquidation.

(a) Series B-1 and Series B-2 Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be entitled to receive, on a pari passu basis and prior and in preference to any distribution of any of the assets of the Corporation to the holders of the Series A Preferred Stock or the Common Stock by reason of their ownership of such stock, an amount per share for each share of Preferred Stock held by them equal to the sum of (i) \$1.06 per share, in the case of the Series B-1 Preferred Stock, and \$1.007 per share, in the case of the Series B-2 Preferred Stock, and (ii) all declared but unpaid dividends (if any) on such share of Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series B-1 Preferred Stock and Series B-2 Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 2(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among the holders of the Series B-1 Preferred Stock and Series B-2 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 2(a).

(b) Series A Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the amounts to which the holders of Series B-1 Preferred Stock and Series B-2 Preferred Stock are

entitled pursuant to Section 2(a) 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 of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A Preferred Stock held by them equal to the sum of (i) \$1.00 per share of Series A Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series A Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation and after the full payment of amounts due to the holders of Series B-1 Preferred Stock and Series B-2 Preferred Stock pursuant to Section 2(a) above, the assets of the Corporation legally available for distribution to the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 2(b), then the entire assets of the Corporation legally available for distribution after the distribution specified in Section 2(a) shall be distributed with equal priority and pro rata among the holders of the Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 2(b).

(c) Remaining Assets. After the payment to the holders of Series B-1 Preferred Stock, Series B-2 Preferred Stock and Series A Preferred Stock of the full preferential amounts specified in Sections 2(a) and 2(b) above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed with equal priority and pro rata among the holders of the Series B-1 Preferred Stock, Series B-2 Preferred Stock, Series A Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them, with the shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Rate.

(d) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 2, a liquidation, dissolution, or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, convey, or otherwise dispose of all or substantially all of its assets or merge with or into or consolidate with any other corporation, limited liability company or other entity (any such transaction, a "Liquidation Transaction"), provided that none of the following shall be considered a Liquidation Transaction: (i) a merger effected exclusively for the purpose of changing the domicile of the Corporation or (ii) a transaction in which the stockholders of the Corporation immediately prior to the transaction own 50% or more of the voting power of the surviving corporation following the transaction in the same relative proportions.

(ii) Valuation of Consideration. In the event of a deemed liquidation as described in Section 2(d)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or the Nasdaq Stock Market ("Nasdaq"), the value shall be based on a formula approved by the Board of Directors

and derived from the closing prices of the securities on such exchange or Nasdaq over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on a formula approved by the Board of Directors and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors of the Corporation and the holders of a majority of the voting power of all then outstanding shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as specified above in Section 2(d)(ii)(A) to reflect the approximate fair market value thereof, as mutually determined in good faith by the Board of Directors of the Corporation and the holders of a majority of the voting power of all then outstanding shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock.

(iii) Notice of Liquidation Transaction. The Corporation shall give each holder of record of Preferred Stock written notice of any impending Liquidation Transaction not later than 10 days prior to the stockholders' meeting called to approve such Liquidation Transaction, or 10 days prior to the closing of such Liquidation Transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Transaction. The first of such notices shall describe the material terms and conditions of the impending Liquidation Transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The Liquidation Transaction shall in no event take place sooner than 10 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein; provided, however that all notice periods or requirements in this Restated Certificate may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of a majority of the voting power of the outstanding shares of Preferred Stock that are entitled to such notice rights counted together as a single class.

(iv) Effect of Noncompliance. In the event the requirements of this Section 2(d) are not complied with, the Corporation shall forthwith either cause the closing of the Liquidation Transaction to be postponed until the requirements of this Section 2 have been complied with, or cancel such Liquidation Transaction, in which event the rights, preferences, privileges and restrictions of the holders of Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section 2(d)(iii).

3. Redemption. The Preferred Stock is not redeemable.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Subject to Section 4(b), each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$1.00 in the case of the Series A Preferred Stock, (ii) \$1.06 in the case of the Series B-1 Preferred Stock, and (iii) \$1.007 in the case of the Series B-2 Preferred Stock, by the Conversion Price applicable to such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$1.00, the initial Conversion Price per share of Series B-1 Preferred Stock shall be \$1.06, and the initial Conversion Price per share of Series B-2 Preferred Stock shall be \$1.007. Such initial Conversion Prices shall be subject to adjustment as set forth in Section 45(a).

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (i) except as provided below in Section 4(b), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which is not less than \$10.00 per share (as adjusted for stock splits, stock dividends, reclassification and the like) and which results in aggregate cash proceeds to the Corporation of not less than \$25,000,000 (net of underwriting discounts and commissions) (a "Qualified IPO") or (ii) the date specified by written consent or agreement of the holders of a majority of the voting power of the then outstanding shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock, counted together as a single class on an as converted basis (each of the events described in (i) and (ii), an "Automatic Conversion Event").

5. Mechanics of Conversion. Before any holder of Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock shall be entitled to convert such Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock into shares of Common Stock, the holder shall either (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock or (ii) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Notwithstanding the foregoing, on the date of an Automatic Conversion Event, the outstanding shares of Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be converted automatically without any further action by the holders of such Preferred Stock and whether or not the certificates representing such shares are

surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either (x) the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above or (y) the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

Except as provided above in the case of an Automatic Conversion Event, any conversion of Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock pursuant to this Section 4 shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 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 as of such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

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

(i) Issuance of Additional Stock below Purchase Price. If the Corporation should issue, at any time after the date of the filing of this Restated Certificate (the "Measurement Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series A Preferred Stock, Series B-1 Preferred Stock, or Series B-2 Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(a)(i), unless otherwise provided in this Section 4(a)(i).

(A) Adjustment Formula. Whenever the Conversion Price is adjusted pursuant to this Section 4(a)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the

"Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock issuable upon the conversion of outstanding convertible or exercisable securities, including, without limitation, warrants, options, notes and Preferred Stock.

(B) Definition of "Additional Stock". For purposes of this Section 4(a)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(a)(i)(E)) by the Corporation after the Purchase Date) other than:

(1) the issuance or sale of capital stock (or options therefor) to employees, consultants and directors of the Corporation, directly or pursuant to a stock option plan, restricted stock purchase plans or other stock plan approved by the Board of Directors, including the Series B Director (as defined in Section 6(b) below);

(2) the issuance of securities in connection with bona fide acquisition, merger or similar transaction, the terms of which are approved by the Board of Directors, including the Series B Director;

(3) the issuance of capital stock to financial institutions, equipment lessors, brokers or similar persons in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions approved by the Board of Directors;

(4) the issuance of the Common Stock issuable upon conversion of the Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock;

(5) the issuance of Common Stock in a Qualified IPO;

(6) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities outstanding as of the date of this Agreement, including without limitation, warrants, notes or options;

(7) the issuance of securities to an entity as a component of any business relationship with such entity primarily for the purpose of strategic collaboration, joint venture, technology licensing or development activities, the terms of which business relationship with such entity are approved by the Board of Directors; or

(8) the issuance of securities in connection with stock dividends, stock splits or similar transactions.

(C) No Fractional Adjustments. No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one tenth of one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) Determination of Consideration. In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) Deemed Issuances of Common Stock. In the case of the issuance (whether before, on or after the applicable Measurement Date) of securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (the "Common Stock Equivalents"), the following provisions shall apply for all purposes of this Section 4(a)(i):

(1) The aggregate maximum number of shares of Common Stock deliverable upon conversion, exchange or exercise (assuming the satisfaction of any conditions to convertibility, exchangeability or exercisability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) of any Common Stock Equivalents and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such securities were issued or such Common Stock Equivalents were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related Common Stock Equivalents (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion, exchange or exercise of any Common Stock Equivalents (the consideration in each case to be determined in the manner provided in Section 4(a)(i)(D)).

(2) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to the Corporation upon conversion, exchange or exercise of any Common Stock Equivalents including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the conversion, exchange or exercise of such Common Stock Equivalents.

(3) Upon the termination or expiration of the convertibility, exchangeability or exercisability of any Common Stock Equivalents, the Conversion Price of the Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock, to the extent in any way affected by or computed using such Common Stock Equivalents, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and Common Stock Equivalents that remain convertible, exchangeable or exercisable) actually issued upon the conversion, exchange or exercise of such Common Stock Equivalents.

(4) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Section 4(a)(i)(E)(1) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(a)(i)(E)(2) or 4(a)(i)(E)(3).

(F) No Increased Conversion Price. Notwithstanding any other provisions of this Section 4(a)(i), except to the limited extent provided for in Sections 4(a)(i)(E)(2) and 4(a)(i)(E)(3), no adjustment of the Conversion Price pursuant to this Section 4(a)(i) shall have the effect of increasing the Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock Conversion Price above such applicable Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the Corporation should at any time after the Measurement Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or Common Stock Equivalents without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Prices of the Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(a)(i)(E).

(iii) Reverse Stock Splits. If the number of shares of Common Stock outstanding at any time after the Measurement Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Prices for the Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(b) Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the

Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(a)(ii), then, in each such case for the purpose of this Section 4(b), the holders of Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their 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.

(c) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock shall thereafter be entitled to receive upon conversion of such Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the applicable Conversion Prices then in effect and the number of shares purchasable upon conversion of such Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

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

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with one-half being rounded upward). The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Prices of Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock pursuant to this Section 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 Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Prices for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and

the amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(e) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right; provided, however that all notice periods or requirements in this Restated Certificate may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of a majority of the voting power of the outstanding shares of Preferred Stock that are entitled to such notice rights counted together as a single class.

(f) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 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 such 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, in addition to such other remedies as shall be available to the holder of such 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate.

(g) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

6. Voting Rights.

(a) Voting. Except as expressly provided by this Certificate or as provided by law, the holders of Preferred Stock shall have the same voting rights as the holders of Common Stock and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and the holders of Common Stock and the Preferred Stock shall vote together as a single class on all matters. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held, and each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could be converted. Fractional votes shall not, however, 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 to the nearest whole number (with one-half being rounded upward).

(b) Election of Directors. So long as at least 500,000 shares (as adjusted for stock splits, stock dividends, reclassification and the like) of Series B-1 Preferred Stock remain outstanding, the holders of Series B-1 Preferred Stock and Series B-2 Preferred Stock, voting as a single class on an as converted basis, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors (the "Series B Director"). The holders of the Preferred Stock, voting together as a single class on an as converted basis, shall be entitled to elect one (1) member of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Common Stock voting together as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Common Stock and Preferred Stock, voting together as a single class, shall elect any additional members of the Corporation's Board of Directors. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors elected by the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy.

(c) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the stock of the Corporation.

7. Protective Provisions.

(a) So long as at least an aggregate of 500,000 shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock are outstanding (as adjusted for stock splits, stock dividends, reclassification and the like), the Corporation shall not, by merger or otherwise, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B-1 Preferred Stock and Series B-2 Preferred Stock, voting together as a single class on an as converted basis:

(i) alter or change the rights, preferences or privileges of the shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock so as to adversely affect the shares of such series;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B-1 Preferred Stock or Series B-2 Preferred Stock;

(iii) authorize or issue, or obligate itself to issue, any other equity security, including any security (other than Series B-1 Preferred Stock and Series B-2 Preferred Stock) convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series B-1 Preferred Stock or Series B-2 Preferred Stock with respect to voting, dividends, conversion or upon liquidation; or

(iv) amend or waive any provision of this Restated Certificate of the Corporation's bylaws so as to materially or adversely affect the shares of such series.

(b) So long as at least 500,000 shares (as adjusted for stock splits, stock splits, stock dividends, reclassification and the like) of Series A Preferred Stock are outstanding, the Corporation shall not, by merger or otherwise, without first obtaining the approval (by vote or written consent as provided by law) of the holders of not less than a majority of the then outstanding shares of the Series A Preferred Stock, voting together as a separate class, increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock.

(c) So long as (i) an aggregate of at least 500,000 shares (as adjusted for stock splits, stock splits, stock dividends, reclassification and the like) of Series B-1 Preferred Stock and Series B-2 Preferred Stock are outstanding, or (ii) at least 500,000 shares (as adjusted for stock splits, stock splits, stock dividends, reclassification and the like) of Series A Preferred Stock are outstanding, the Corporation shall not, by merger or otherwise, without first obtaining the approval (by vote or written consent as provided by law) of the holders of not less than a majority of the then outstanding shares of the Series A Preferred Stock, Series B-1 Preferred Stock and Series B-2 Preferred Stock, voting together as a single class on an as converted basis:

(i) approve the purchase, redemption, or other acquisition of any capital stock of the Corporation, other than repurchases at the lower of fair market value or cost pursuant to employee, consultant or founder stock restriction agreements or the Corporation's option plans or other employee stock incentive programs or arrangements approved by the of the Board of Directors, including the Series B Director;

(ii) declare or pay or obligate itself to pay any dividend or other distribution with respect to any capital stock of the Corporation, other than a distribution payable solely in shares of Common Stock of the Corporation;

(iii) increase or decrease the number of shares reserved under the Corporation's stock or option incentive plan, or authorize any new stock or option incentive plan, unless approved by the of the Board of Directors, including the Series B Director;

(iv) authorize indebtedness for borrowed money or a guaranty by the Corporation, in a single or related series of transactions, in an amount or obligation in excess of \$250,000, unless approved by the of the Board of Directors, including the Series B Director;

(v) authorize any contractual obligation in an amount in excess of \$250,000 in the aggregate or which in any way encumbers the Corporation's intellectual property, unless approved by the of the Board of Directors, including the Series B Director;

(vi) change the authorized size of the Board of Directors; or

(vii) effect a liquidation, dissolution or winding up of the Corporation or a Liquidation Transaction.

8. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. This Restated Certificate shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) Common Stock.

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

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

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. Each holder of Common Stock shall have the right to one vote per share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal bylaws of the Corporation, subject to Article IV(B)7(a)(iv) above.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the bylaws of the Corporation.

ARTICLE VII

(A) 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 for breach of fiduciary duty as a director.

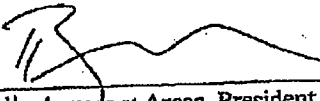
(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(C) 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 any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

[Signature appears on the following page.]

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at Seattle, Washington on August 29, 2005.



Blaise Aguera y Arcas, President

Signature Page to Amended and Restated Certificate of Incorporation