

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	09/07/2004
CONVEYING PARTY DATA	
Name	Execution Date
AKIMBI SYSTEMS, INC.	09/07/2004
RECEIVING PARTY DATA	
Name:	VMware
Street Address:	3145 Porter Drive
City:	Palo Alto
State/Country:	CALIFORNIA
Postal Code:	94304
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	11381119
CORRESPONDENCE DATA	
Fax Number:	(650)474-8401
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	650-474-8400
Email:	ptomatters@glenn-law.com
Correspondent Name:	GLENN PATENT GROUP
Address Line 1:	3475 Edison Way, Suite L
Address Line 4:	Menlo Park, CALIFORNIA 95133
ATTORNEY DOCKET NUMBER:	AKIM0001
NAME OF SUBMITTER:	Michael A. Glenn

Total Attachments: 41
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PATENT

REEL: 018223 FRAME: 0494

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**MINUTE BOOK OF
AKIMBI SYSTEMS, INC.**

A. CERTIFICATE OF INCORPORATION

1. Certificate of Incorporation of Akimbi Systems, Inc., as filed with the Secretary of State of the State of Delaware on September 7, 2004.
2. Amended and Restated Certificate of Incorporation, as filed the Secretary of State of the State of Delaware on December 20, 2004.
3. Second Amended and Restated Certificate of Incorporation, as filed the Secretary of State of the State of Delaware on October 18, 2005.

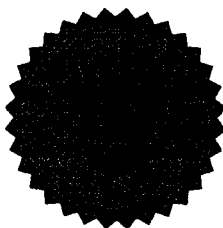
Delaware

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 INCORPORATION OF "AKIMBI SYSTEMS, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF SEPTEMBER, A.D. 2004, AT 1:11 O'CLOCK P.M.

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3851315 8100

040647115

AUTHENTICATION: 3335465

DATE: 09-07-04

PATENT
REEL: 018223 FRAME: 0497

CERTIFICATE OF INCORPORATION

OF

AKIMBI SYSTEMS, INC.

ARTICLE I

The name of this Corporation is Akimbi Systems, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 15 East North Street, City of Dover, County of Kent, Delaware 19901. The name of its registered agent at that address is Incorporating Services, Ltd.

ARTICLE III

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

ARTICLE IV

The Incorporator of the Corporation is Prashant Gupta. The address of the Incorporator is:

101 Jefferson Drive
Menlo Park, California 94025

ARTICLE V

The corporation is authorized to issue only one class of capital stock, which shall be designated "Common Stock." The total number of such shares of Common Stock which the corporation is authorized to issue is 12,000,000 shares, par value \$0.0001 per share.

ARTICLE VI

To the fullest extent permitted by the General Corporation Law of Delaware, as the same may be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law of Delaware is hereafter amended to authorize, with or without the approval of a corporation's stockholders, further reductions in the liability of the Corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the General Corporation Law of Delaware, as so amended.

Any repeal or modification of the foregoing provision of this Article VI, by amendment of this Article VI or by operation of law, shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

ARTICLE VII

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and other agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification), through bylaw provisions, agreements with any such director, officer, employee or other agent or other person, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law of Delaware, subject only to limits created by applicable Delaware law (statutory or nonstatutory), with respect to actions for breach of duty to a corporation, its stockholders, and others.

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

ARTICLE VIII

The Corporation is to have perpetual existence.

ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE X

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of this Corporation is expressly authorized to adopt, amend or repeal the bylaws of the Corporation, but the stockholders may adopt additional bylaws and may amend or repeal any bylaw whether adopted by them or otherwise.

ARTICLE XI

The number of directors that will constitute the whole Board of Directors shall be designated in the Bylaws of the Corporation. Vacancies created by the resignation of one or more members of the Board of Directors and newly created directorships, created in accordance with the Bylaws of this Corporation, may be filled, by the vote of majority, although less than a quorum, of the directors then in office or by a sole remaining director. Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE XII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. Advance notice of new business and stockholder nominations for the election of Directors shall be provided in the manner and to the extent provided in the Bylaws of the Corporation. Any action required by the General Corporation Law of Delaware to be taken at any annual or special meeting of stockholders of a corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, provided, however, that an action by written consent to elect directors, unless such action is unanimous, may be in lieu of holding of an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

ARTICLE XIII

Stockholders of this Corporation shall not be entitled to cumulate their votes for the election of directors or any other matter submitted to a vote of the stockholders.

ARTICLE XIV

Preemptive rights shall not exist with respect to shares of capital stock or securities convertible into the capital stock of this Corporation, whether now or hereafter authorized.

ARTICLE XV

The books of the Corporation may be kept (subject to any statutory provision) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors in the Bylaws of the Corporation.

The undersigned hereby further declares and certifies under penalty of perjury that the facts set forth in the foregoing certificate are true and correct to the knowledge of the undersigned, and that this certificate is the act and deed of the undersigned.

Executed on this 7th day of September, 2004.

By: 

Prashant Gupta, Sole Incorporator

Delaware

PAGE 1

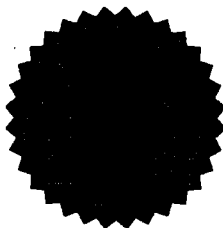
The First State

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 RESTATED CERTIFICATE OF "AKIMBI SYSTEMS, INC.", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF DECEMBER, A.D. 2004, AT 5:12 O'CLOCK P.M.

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

3851315 8100

040923742



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3565262

DATE: 12-20-04

PATENT
REEL: 018223 FRAME: 0502

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AKIMBI SYSTEMS, INC.,
a Delaware Corporation

The undersigned does hereby certify on behalf of Akimbi Systems, Inc. (the "*Corporation*"), a corporation organized and existing under the Delaware General Corporation Law, as follows:

FIRST: That the undersigned is the duly elected and acting Chief Executive Officer of the Corporation.

SECOND: That the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware on September 7, 2004.

THIRD: That pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation of the Corporation, as amended to the date of the filing of this certificate, is hereby amended and restated in its entirety as set forth in **Exhibit A** hereto.

FOURTH: That the Amendment and Restatement of the Certificate of Incorporation of the Corporation as set forth in **Exhibit A** hereto has been duly adopted and approved by the board of directors and stockholders of the Corporation in accordance with the applicable provisions of Sections 141, 228, 242 and 245 of the Delaware General Corporation Law.

The undersigned hereby further declares and certifies under penalty of perjury that the facts set forth in the foregoing certificate are true and correct to the knowledge of the undersigned, and that this certificate is the act and deed of the undersigned.

Executed in Menlo Park, California on this 17th day of December, 2004.

By: /s/ James Phillips
James Phillips
President and CEO

EXHIBIT A

ARTICLE I

The name of the Corporation is Akimbi Systems, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

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) Classes of Capital Stock

The Corporation is authorized to issue 42,700,000 shares of capital stock in the aggregate. The capital stock of the Corporation shall be divided into two classes, designated "*Common Stock*" and "*Preferred Stock*." The number of shares of Common Stock that the Corporation is authorized to issue is 28,600,000. The number of shares of Preferred Stock that the Corporation is authorized to issue is 14,100,000, all of which shall be designated as Series A Preferred Stock ("*Series A Preferred*"). The Common Stock and Preferred Stock shall each have a par value of \$0.0001 per share. The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock in accordance with Section 4 of Division (B) below. Subject to Section 6 of Division (B) below, 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 or reserved for the exercise of options or warrants or conversion of the Series A Preferred) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon, voting as a single class (and not as a separate individual class of solely holders of Common Stock, excluding those holders of equity securities who may be entitled to vote thereon as provided in this Certificate of Incorporation), as provided by Section 242(b)(2) of the Delaware General Corporation Law.

(B) Rights, Preferences, Privileges and Restrictions of Preferred Stock

The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective series of Preferred Stock or the holders thereof are as follows:

1. Dividends

(a) The holders of Series A Preferred shall be entitled to receive dividends at the rate of eight percent (8%) of the Original Issue Price per share of the Series A Preferred Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, payable out of funds legally available therefor. Such dividends shall be payable when, as, and if declared by the board of directors, acting in its sole discretion. The right to receive dividends shall not be cumulative, and no right shall accrue to holders of any shares by reason of the fact that dividends on such shares are not declared and paid in any prior year. No dividend shall be paid or declared and set aside in any period with respect to the Common Stock unless and until dividends have been paid or declared and set aside for payment in such year with respect to each outstanding share of Preferred Stock at the dividend rates set forth above.

(b) After payment of dividends at the annual rates set forth above, any additional dividends declared shall be distributed among all holders of Preferred Stock and Common 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 converted into Common Stock pursuant to Section 4 hereof.

(c) If at the time any shares of Preferred Stock are converted into Common Stock there are any declared but unpaid dividends on such shares, then the Corporation at its option shall either pay the unpaid dividends or issue additional shares of Common Stock in the amount of the unpaid dividends at the applicable fair market value for such shares as then in effect.

2. Liquidation

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, the amount of \$0.26 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares, the "*Original Issue Price*"), plus all declared but unpaid dividends on such shares. If the assets and funds available for distribution to the holders of the Preferred Stock shall be insufficient to pay the stated preferential amounts in full, then the entire assets and funds of the Corporation legally available for distribution shall be distributed to the holders of the Preferred Stock in proportion to the preferential amount each such holder would otherwise be entitled to receive.

(b) After the preferential amounts have been paid in full to the holders of the Preferred Stock in accordance with paragraph (a) of this Section 2, all remaining assets of the Corporation legally available for distribution shall be distributed among the holders of the Common Stock and the Preferred Stock ratably in proportion to the number of shares of Common Stock actually held or into which shares of Preferred Stock held by them would then be convertible in accordance with Section 4 below until such time as the holders of

Series A Preferred have received an aggregate distribution pursuant to paragraphs (a) and (b) of this Section 2 of \$0.78 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares).

(c) After the preferential amounts have been paid in full to the holders of Series A Preferred and Common Stock as set forth above, all remaining assets of the Corporation shall be distributed ratably among the holders of the Common Stock.

(d) For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to include any of the following, whether in a single transaction or through a series of related transactions: (i) the Corporation's sale of all or substantially all of its assets, (ii) the acquisition of the Corporation by another entity (other than a reincorporation for the purpose of changing the Corporation's domicile) by means of merger or other form of corporate reorganization in which the outstanding shares of the Corporation are exchanged for securities or other consideration issued by or on behalf of the acquiring entity as a result of which the stockholders of the Corporation immediately prior to such transaction hold less than fifty percent (50%) of the voting power of the surviving or resulting corporation, (iii) transfer to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, as a result of which the stockholders of the Corporation immediately prior to such transaction hold less than fifty percent (50%) of the voting power of the Corporation, and (iv) the perpetual, exclusive and irrevocable licensing of all or substantially all of the Corporation's intellectual property to a third party (any such event, a "*Deemed Liquidation*"). Notwithstanding the foregoing, the holders of sixty-six and two-thirds percent (66 2/3%) of the then outstanding Series A Preferred may waive the classification of any transaction, as a liquidation, dissolution or winding up of the Corporation, including any Deemed Liquidation, and thereby waive the effects of this Section 2 with respect to such transaction. For the sake of clarification, an equity financing in which the Corporation is the surviving entity and the primary purpose of which is raising capital shall not be considered a Deemed Liquidation hereunder.

(e) Unless otherwise specified in a definitive agreement approved by the stockholders of the Corporation in accordance with the Delaware General Corporation Law and the Corporation's Certificate of Incorporation and bylaws as then in effect, the value of any securities to be delivered to the stockholders pursuant to this Section 2 shall be determined as follows:

(i) If listed on a national securities exchange or the Nasdaq National Market, SmallCap or BBX, then the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing of such transaction;

(ii) If actively traded over the counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the closing of such transaction; and

(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 Corporation's board of directors.

Notwithstanding the above, the method of valuation of securities subject to investment letters or other similar restrictions on free marketability shall take into account an appropriate discount (as determined in good faith by the Board of Directors) from the market value as determined pursuant to the preceding clauses (i), (ii) and (iii), so as to reflect the approximate fair market value thereof.

(f) Notwithstanding Section 1 above, this Section 2, and Section 6 below, the Corporation may at any time, out of funds legally available for such purpose, repurchase shares of Common Stock issued to or held by officers, directors, employees or other service providers upon termination of their employment or services pursuant to agreements providing the Corporation with such a right of repurchase, whether or not all declared dividends have been paid or set aside for payment and whether or not all Preferred Stock required to be redeemed by the Corporation has been redeemed or funds have been set aside for such purpose.

3. **Redemption**

The Preferred Stock is not redcmable.

4. **Conversion**

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for such series of Preferred Stock by the then effective Conversion Price for such Series of Preferred Stock (such result, the "*Conversion Rate*"). The initial Series A Conversion Price shall be \$0.26. The Series A Conversion Price is subject to adjustment as provided in Section 4.

(b) **Automatic Conversion.** Each share of Preferred Stock shall be automatically converted into shares of Common Stock at the then effective Conversion Rate for such series (i) with the approval, by affirmative vote, written consent, or agreement, of the holders of not less than sixty-six and two-thirds percent (66-2/3%) of the outstanding Series A Preferred, or (ii) upon the effectiveness of a registration statement under the Securities Act of 1933, as amended, filed in connection with a firm commitment underwritten initial public offering of Common Stock for the account of the Corporation with a price per share of at least \$0.78 (as adjusted for any stock dividends, combinations or splits with respect to such shares) and an aggregate offering price to the public of not less than \$30,000,000 (prior to deduction of underwriter commissions and offering expenses) (a "*Qualified IPO*").

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to

which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price for such series of Preferred Stock. Conversion of shares of Preferred Stock at the option of the holder thereof shall be effected by delivery to the office of the Corporation or to any transfer agent for such shares of duly endorsed certificates for the shares being converted and of written notice to the Corporation that the holder elects to convert such shares. Conversion shall be deemed to occur immediately prior to the close of business on the date the shares and notice are delivered. Automatic conversion of the Preferred Stock pursuant to Section 4(b) shall be effective without any further action on the part of the holders of such shares and shall be effective whether or not the certificates for such shares are surrendered to the Corporation or its transfer agent. Holders entitled to receive Common Stock upon conversion of Preferred Stock shall be treated for all purposes as the record holders of such shares of Common Stock on the date conversion is deemed to occur. The Corporation shall not be obligated to issue certificates evidencing shares of Common Stock issuable upon conversion of Preferred Stock unless either (i) the certificates evidencing such shares being converted are delivered to the Corporation or its transfer agent as provided above, or (ii) the holder (A) notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and (B) executes an agreement, and at the Corporation's election provides a surety bond or other security, satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after the delivery of such certificates, or the agreement to indemnify in the case of a lost certificate, issue and deliver to the holder of the shares of Preferred Stock being converted, a certificate or certificates for the number of shares of Common Stock to which the holder is entitled and a check payable to the holder for any cash due with respect to fractional shares.

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

(i) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock below the Conversion Price. If the Corporation issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(i)(D)) without consideration or for a consideration per share less than the Conversion Price for a given series of Preferred Stock in effect immediately prior to such issuance, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest hundredth of a cent) as set forth herein, unless otherwise provided in this Section 4.

(A) Adjustment Formula. Whenever the Conversion Price for a given series of Preferred Stock is adjusted pursuant to this Section 4(d)(i), the new Conversion Price for such series of Preferred Stock shall be determined by multiplying the initial Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (the "*Common Stock Outstanding*") plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of

Common Stock so issued would purchase at the Conversion Price for such series of Preferred Stock in effect immediately prior to such issue, and the denominator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of this paragraph, the number of shares of Common Stock Outstanding shall be deemed to include all Common Stock issued and outstanding, any Common Stock issuable upon conversion of issued and outstanding Preferred Stock, and any Common Stock issuable upon exercise or conversion of all other outstanding Convertible Securities and Options whether vested or unvested and whether or not immediately exercisable (assuming conversion of Convertible Securities issuable upon exercise of Options therefor).

(B) **Special Definitions.** For purposes of this Section 4, the following definitions shall apply:

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

(2) "**Original Issue Date**" shall mean the date on which the first share of Series A Preferred was issued by the Corporation.

(3) "**Convertible Securities**" shall mean instruments of indebtedness or securities convertible into or exchangeable for Common Stock including without limitation, the Preferred Stock.

(4) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued (or deemed to be issued pursuant to Section 4(d)(i)(D) below) by the Corporation after the Original Issue Date, other than as follows:

(I) upon conversion of shares of Preferred Stock;

(II) shares of capital stock, or Options to purchase capital stock, issued to officers, directors, employees of and service providers to the Corporation pursuant to plans or arrangements approved by the board of directors, including the approval of both Series A Directors;

(III) as a dividend or other distribution on the Preferred Stock, or any other event for which adjustment is made pursuant to Section 4(d)(ii), (e) or (f);

(IV) capital stock, or Options to purchase capital stock, issued to financial institutions, lenders or lessors in connection with bona fide commercial credit arrangements, equipment financings, commercial property leases, or similar transactions, the terms of which have been approved by the board of directors including the approval of at least one (1) Series A Director;

(V) capital stock or Options to purchase capital stock issued in connection with bona fide acquisitions, mergers, strategic partnership transactions or similar transactions, the terms of which have been approved by the board of directors, including the approval of at least one (1) Series A Director;

(VI) shares of capital stock issued or issuable in a Qualified IPO;

(VII) Common Stock issued or deemed issued pursuant to Section 4(d)(i)(D) as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of this Section 4(d);

(VIII) if holders of sixty-six and two-thirds percent (66 2/3%) of the Series A Preferred then outstanding agree in writing that such shares shall not constitute Additional Shares of Common Stock;

(IX) upon the exercise or conversion of Options or Convertible Securities that were outstanding prior to the Original Issue Date; or

(X) by way of dividend or other distributions on securities referred to in subsections (I) through (IX) above.

(C) **No Adjustment of Conversion Price.** No adjustment in the Conversion Price of a given series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect immediately prior to such issuance.

(D) **Deemed Issue of Additional Shares of Common Stock.** If the Corporation at any time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of any holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

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

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, then the Conversion Price for each affected series of Preferred Stock computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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

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

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issuance of the Convertible Securities with respect to which such Options were actually exercised; and

(4) no readjustment pursuant to this Section 4(d)(i)(D) shall have the effect of increasing the Conversion Price for any series of Preferred Stock to an amount which exceeds the lesser of (x) the Conversion Price for such series of Preferred Stock on the original adjustment date, or (y) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date, and no readjustment shall affect Common Stock issued on conversion of Preferred Stock prior to such readjustment.

(E) Determination of Consideration. For purposes of this Section 4(d), the consideration received by the Corporation for the issue of any Additional

Shares of Common Stock shall be computed as follows:

(1) **Cash and Property.** Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation prior to amounts paid or payable for accrued interest and prior to any commissions or expenses paid by the Corporation;

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

(III) if Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received for the Additional Shares of Common Stock, computed as provided in subsections (I) and (II) above, as determined in good faith by the board of directors.

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(i)(D) in respect of Options and Convertible Securities shall be determined by dividing:

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

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) **Adjustments for Stock Dividends, Combinations or Splits.**

If the outstanding shares of Common Stock are subdivided, by stock split or otherwise, into a greater number of shares of Common Stock, or if the Corporation shall declare or pay any dividend on the Common Stock payable in shares of Common Stock, then the Conversion Price for each series of Preferred Stock in effect prior to such event shall be proportionately decreased upon the occurrence of such event. If the outstanding shares of Common Stock are combined or consolidated, by reclassification, reverse stock split or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for each series of Preferred Stock in effect prior to such event shall be proportionately increased upon the occurrence of such event.

(e) **Adjustments for Other Distributions.** If the Corporation fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities of the Corporation other than shares of Common Stock (excluding any distribution in which the Preferred Stock participates on an as-converted basis, and any distribution for which adjustment is otherwise made pursuant to this Section 4), then in each such case provision shall be made so that the holders of Preferred Stock receive upon conversion, in addition to the Common Stock issuable upon conversion of their shares, the property or other securities of the Corporation that they would otherwise have received had their shares of Preferred Stock been converted into Common Stock immediately prior to such event and had they thereafter retained such securities, subject to all other adjustments called for during such period under this Section 4.

(f) **Adjustments for Reclassification, Exchange and Substitution.** If the Common Stock is changed into the same or a different number of shares of any other class or series of stock, whether by capital reorganization, reclassification or otherwise (other than a Deemed Liquidation under Section 2, and events for which adjustment is made pursuant to Sections 4(d)(ii) or 4(e) above), the Conversion Price for each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization, reclassification or change, be adjusted such that the Preferred Stock shall be convertible into, in lieu of the Common Stock which the holders thereof would otherwise have been entitled to receive, a number of shares of such other class or series of capital stock equivalent to the number of shares of such other class or series of capital stock that such holders would have been entitled to receive in such reclassification, capital reorganization or change for the number of shares of Common Stock that the holders would have been entitled to receive upon conversion of their Preferred Stock immediately prior to such reclassification, capital reorganization or change.

(g) **No Impairment.** The Corporation will not without first obtaining the consent of the holders of sixty-six and two-thirds percent (66-2/3%) of the outstanding shares of Series A Preferred Stock, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section 4(d) by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4(d) and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Preferred Stock under this Section 4 against impairment.

(h) **Certificate as to Adjustments.** The Corporation, at its expense, shall promptly compute any Conversion Price adjustments and provide each holder of Preferred Stock a certificate describing such adjustment and showing in detail the facts upon which such adjustment is based. If requested in writing by any holder of Preferred Stock, the Corporation shall provide such holder a certificate describing any Conversion Price adjustments, the current Conversion Price and the amount of Common Stock or other property issuable upon conversion of the shares of Preferred Stock held by such holder.

(i) **Notices of Record Date.** If the Corporation shall propose at any time:

(A) to declare any dividend or distribution upon its Common Stock other than a distribution payable solely in Common Stock;

(B) to offer for subscription pro rata to the holders of any class or series of its capital stock any additional shares of capital stock of any class or series or other rights;

(C) to effect any reclassification or recapitalization of its Common Stock; or

(D) to effect any liquidation or winding up of the Corporation, including, without limitation, a Deemed Liquidation of the Corporation;

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock:

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

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

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of Preferred Stock at the addresses for such stockholders as shown on the books of the Corporation.

(j) **Reservation of Stock Issuable Upon Conversion.** This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the 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 the 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 Amended and Restated Certificate of Incorporation.

5. Voting

(a) General. Except as expressly provided by this Certificate of Incorporation or as required by law, the holders of Preferred Stock shall have the same voting rights as the holders of the 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 then be converted. Fractional votes shall not be permitted. Any fractional voting rights resulting from the above formula (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 of votes (with one-half being rounded upward).

(b) Election of Directors.

(i) Until the date upon which the Preferred Stock is automatically converted in accordance with Section 4(b) above: (x) the holders of the Preferred Stock, voting together as a separate class on an as-converted basis, shall be entitled to elect two (2) members of the board of directors (the "*Series A Directors*"), (y) the holders of Common Stock voting together as a separate class (without the vote of the holders of Preferred Stock) shall be entitled to elect one (1) member of the board of directors, who shall be the Chief Executive Officer of the Corporation (the "*Common Director*") and (z) the holders of the Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) members of the board of directors (the "*Mutual Directors*"). Following an automatic conversion of the Preferred Stock in accordance with Section 4(b), the holders of the Common Stock shall be entitled to elect all of the members of the board of directors.

(ii) In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to Section 5(b)(i), the remaining directors so elected by that class or series may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class or series), elect a successor or

successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

6. Protective Provisions

This Corporation shall not, without the approval of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding shares of Series A Preferred, by way of merger or otherwise, take any action that:

(i) authorizes or obligates the Corporation to pay any dividend or make any other distribution in respect of the Corporation's capital stock (other than a dividend payable solely in shares of Common Stock);

(ii) authorizes or issues, or obligates the Corporation to sell or issue, (by reclassification or otherwise) any new class or series of securities;

(iii) amends the Corporation's certificate of incorporation or bylaws;

(iv) redeems or repurchases any shares of capital stock (excluding repurchases at cost of Common Stock upon termination of an officer, employee, director or service provider pursuant to plans and arrangements previously approved by the board of directors);

(v) effects a change to the authorized number of directors;

(vi) effects any liquidation or winding up of the Corporation, including, without limitation, a Deemed Liquidation of the Corporation; or

(vii) effects an initial public offering of the Corporation's capital stock.

7. Status of Converted Shares

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

(C) **Rights, Preferences, Privileges and Restrictions of Common Stock**

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock or the holders thereof are as follows:

1. **Dividends.** Subject to the prior rights of holders of all classes of stock at the time outstanding having superior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if 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.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) above.

3. **Redemption.** The Common Stock is not redeemable other than at the sole discretion of the Corporation, pursuant to the terms of a written plan, or agreements with individual stockholders that provide for repurchases by the Corporation in connection with the termination of such stockholder's services to the Corporation.

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

ARTICLE V

(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 V, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article V, shall eliminate or reduce the effect of this Article V in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article V, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VI

Subject to Section 6 of Division (B) of Article IV, the board of directors of the Corporation is expressly authorized to make, alter or repeal bylaws of the Corporation, but the stockholders may make additional bylaws and may alter or repeal any bylaw whether adopted by them or otherwise.

ARTICLE VII

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

ARTICLE VIII

The Corporation is to have perpetual existence.

ARTICLE IX

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

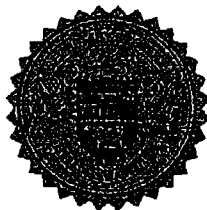
Delaware

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 RESTATED CERTIFICATE OF "AKIMBI SYSTEMS, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF OCTOBER, A.D. 2005, AT 9:30 O'CLOCK P.M.

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



3851315 8100

050851669

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4234228

DATE: 10-19-05

PATENT
REEL: 018223 FRAME: 0519

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:30 PM 10/18/2005
FILED 09:30 PM 10/18/2005
SRV 050851669 - 3851315 FILE

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AKIMBI SYSTEMS, INC.,
a Delaware Corporation**

The undersigned does hereby certify on behalf of Akimbi Systems, Inc. (the "*Corporation*"), a corporation organized and existing under the Delaware General Corporation Law, as follows:

FIRST: That the undersigned is the duly elected and acting Chief Executive Officer of the Corporation.

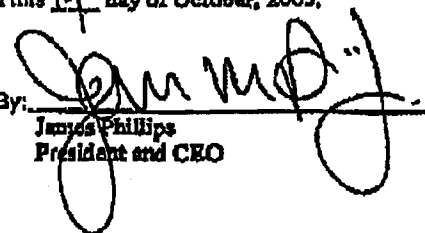
SECOND: That the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware on September 7, 2004.

THIRD: That pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation of the Corporation, as amended to the date of the filing of this certificate, is hereby amended and restated in its entirety as set forth in Exhibit A hereto.

FOURTH: That the Second Amendment and Restatement of the Certificate of Incorporation of the Corporation as set forth in Exhibit A hereto has been duly adopted and approved by the board of directors and stockholders of the Corporation in accordance with the applicable provisions of Sections 141, 228, 242 and 245 of the Delaware General Corporation Law.

The undersigned hereby further declares and certifies under penalty of perjury that the facts set forth in the foregoing certificate are true and correct to the knowledge of the undersigned, and that this certificate is the act and deed of the undersigned.

Executed in Menlo Park, California on this 14 day of October, 2005.

By: 
James Phillips
President and CEO

BY057620124

EXHIBIT A

ARTICLE I

The name of the Corporation is Akimbi Systems, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

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) Classes of Capital Stock

The Corporation is authorized to issue 76,394,939 shares of capital stock in the aggregate. The capital stock of the Corporation shall be divided into two classes, designated "Common Stock" and "Preferred Stock." The number of shares of Common Stock that the Corporation is authorized to issue is 45,500,000. The number of shares of Preferred Stock that the Corporation is authorized to issue is 30,894,939, 13,215,381 of which shall be designated as Series A Preferred Stock ("*Series A Preferred*"), and 17,679,558 of which shall be designated as Series B Preferred Stock ("*Series B Preferred*"). The Common Stock and Preferred Stock shall each have a par value of \$0.0001 per share. The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock in accordance with Section 4 of Division (B) below. Subject to Section 6 of Division (B) below, 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 or reserved for the exercise of options or warrants or conversion of the Series A Preferred or Series B Preferred) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon, voting as a single class (and not as a separate individual class of solely holders of Common Stock, excluding those holders of equity securities who may be entitled to vote thereon as provided in this Certificate of Incorporation), as provided by Section 242(b)(2) of the Delaware General Corporation Law.

(B) Rights, Preferences, Privileges and Restrictions of Preferred Stock

The relative rights, preferences, privileges and restrictions granted to or imposed

upon the respective series of Preferred Stock or the holders thereof are as follows:

1. Dividends

(a) The holders of Series A Preferred and Series B Preferred shall be entitled to receive dividends on a pari passu basis at the rate of eight percent (8%) of the Original Issue Price per share of the Series A Preferred and Series B Preferred, respectively (as adjusted for any stock dividends, combinations or splits with respect to such shares), per annum, payable out of funds legally available therefor. Such dividends shall be payable when, as, and if declared by the board of directors, acting in its sole discretion. The right to receive dividends shall not be cumulative, and no right shall accrue to holders of any shares by reason of the fact that dividends on such shares are not declared and paid in any prior year. No dividend shall be paid or declared and set aside in any period with respect to the Common Stock unless and until dividends have been paid or declared and set aside for payment in such year with respect to each outstanding share of Preferred Stock at the dividend rates set forth above.

(b) After payment of dividends at the annual rates set forth above, any additional dividends declared shall be distributed among all holders of Preferred Stock and Common 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 converted into Common Stock pursuant to Section 4 hereof.

(c) If at the time any shares of Preferred Stock are converted into Common Stock there are any declared but unpaid dividends on such shares, then the Corporation at its option shall either pay the unpaid dividends or issue additional shares of Common Stock in the amount of the unpaid dividends at the applicable fair market value for such shares as then in effect.

2. Liquidation

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred and the Series B Preferred shall be entitled to receive on a pari passu basis, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, the amount of \$0.26 and \$0.4525 per share of Series A Preferred and Series B Preferred, respectively (as adjusted for any stock dividends, combinations or splits with respect to such shares, the "Original Issue Price"), plus all declared but unpaid dividends on such shares. If the assets and funds available for distribution to the holders of the Preferred Stock shall be insufficient to pay the stated preferential amounts in full, then the entire assets and funds of the Corporation legally available for distribution shall be distributed to the holders of the Preferred Stock in proportion to the preferential amount each such holder would otherwise be entitled to receive.

(b) After the preferential amounts have been paid in full to the holders of the Preferred Stock in accordance with paragraph (a) of this Section 2, all remaining assets of

the Corporation legally available for distribution shall be distributed among each particular holder of the Common Stock and the Preferred Stock ratably in proportion to the number of shares of Common Stock actually held or into which shares of Preferred Stock held by such holder would then be convertible in accordance with Section 4 below until such time as each particular holder of Series A Preferred and Series B Preferred has received an aggregate distribution pursuant to paragraphs (a) and (b) of this Section 2 of \$0.78 and \$1.3575 per share of Series A Preferred and Series B Preferred, respectively (as adjusted for any stock dividends, combinations or splits with respect to such shares)

(c) After the preferential amounts have been paid in full to the holders of Series A Preferred, Series B Preferred and Common Stock as set forth above, all remaining assets of the Corporation shall be distributed ratably among the holders of the Common Stock.

(d) For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to include any of the following, whether in a single transaction or through a series of related transactions: (i) the Corporation's sale of all or substantially all of its assets, (ii) the acquisition of the Corporation by another entity (other than a reincorporation for the purpose of changing the Corporation's domicile) by means of merger or other form of corporate reorganization in which the outstanding shares of the Corporation are exchanged for securities or other consideration issued by or on behalf of the acquiring entity as a result of which the stockholders of the Corporation immediately prior to such transaction hold less than fifty percent (50%) of the voting power of the surviving or resulting corporation, (iii) transfer to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, as a result of which the stockholders of the Corporation immediately prior to such transaction hold less than fifty percent (50%) of the voting power of the Corporation, and (iv) the perpetual, exclusive and irrevocable licensing of all or substantially all of the Corporation's intellectual property to a third party (any such event, a "Deemed Liquidation"). Notwithstanding the foregoing, the holders of seventy-five percent (75%) of the then outstanding shares of Preferred Stock voting together as a single class on an as-converted basis may waive the classification of any transaction, as a liquidation, dissolution or winding up of the Corporation, including any Deemed Liquidation, and thereby waive the effects of this Section 2 with respect to such transaction. For the sake of clarification, an equity financing in which the Corporation is the surviving entity and the primary purpose of which is raising capital shall not be considered a Deemed Liquidation hereunder.

(e) Unless otherwise specified in a definitive agreement approved by the stockholders of the Corporation in accordance with the Delaware General Corporation Law and the Corporation's Certificate of Incorporation and bylaws as then in effect, the value of any securities to be delivered to the stockholders pursuant to this Section 2 shall be determined as follows:

(i) If listed on a national securities exchange or the Nasdaq National Market, SmallCap or BBX, then the value shall be deemed to be the average of the

closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing of such transaction;

(ii) If actively traded over the counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the closing of such transaction; and

(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 Corporation's board of directors.

Notwithstanding the above, the method of valuation of securities subject to investment letters or other similar restrictions on free marketability shall take into account an appropriate discount (as determined in good faith by the Board of Directors) from the market value as determined pursuant to the preceding clauses (i), (ii) and (iii), so as to reflect the approximate fair market value thereof.

(f) Notwithstanding Section 1 above, this Section 2, and Section 6 below, the Corporation may at any time, out of funds legally available for such purpose, repurchase shares of Common Stock issued to or held by officers, directors, employees or other service providers upon termination of their employment or services pursuant to agreements providing the Corporation with such a right of repurchase, whether or not all declared dividends have been paid or set aside for payment and whether or not all Preferred Stock required to be redeemed by the Corporation has been redeemed or funds have been set aside for such purpose

3. Redemption

The Preferred Stock is not redeemable

4. Conversion

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for such series of Preferred Stock by the then effective Conversion Price for such Series of Preferred Stock (such result, the "Conversion Rate"). The initial Series A Conversion Price shall be \$0.26 and is subject to adjustment as provided in Section 4. The initial Series B Conversion Price shall be \$0.4525 and is subject to adjustment as provided in Section 4.

(b) Automatic Conversion. Each share of Preferred Stock shall be automatically converted into shares of Common Stock at the then effective Conversion Rate for such series (i) with the approval, by affirmative vote, written consent, or agreement, of the holders of not less than sixty-six and two-thirds percent (66-2/3%) of the outstanding shares of Series A Preferred and sixty-six and two-thirds percent (66-2/3%) of the outstanding shares of Series B Preferred, each voting as a separate class on an as-converted

basis, or (ii) upon the effectiveness of a registration statement under the Securities Act of 1933, as amended, filed in connection with a firm commitment underwritten initial public offering of Common Stock for the account of the Corporation with a price per share of at least \$1.3575 (as adjusted for any stock dividends, combinations or splits with respect to such shares) and an aggregate offering price to the public of not less than \$30,000,000 (prior to deduction of underwriter commissions and offering expenses) (a "Qualified IPO").

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price for such series of Preferred Stock. Conversion of shares of Preferred Stock at the option of the holder thereof shall be effected by delivery to the office of the Corporation or to any transfer agent for such shares of duly endorsed certificates for the shares being converted and of written notice to the Corporation that the holder elects to convert such shares. Conversion shall be deemed to occur immediately prior to the close of business on the date the shares and notice are delivered. Automatic conversion of the Preferred Stock pursuant to Section 4(b) shall be effective without any further action on the part of the holders of such shares and shall be effective whether or not the certificates for such shares are surrendered to the Corporation or its transfer agent. Holders entitled to receive Common Stock upon conversion of Preferred Stock shall be treated for all purposes as the record holders of such shares of Common Stock on the date conversion is deemed to occur. The Corporation shall not be obligated to issue certificates evidencing shares of Common Stock issuable upon conversion of Preferred Stock unless either (i) the certificates evidencing such shares being converted are delivered to the Corporation or its transfer agent as provided above, or (ii) the holder (A) notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and (B) executes an agreement, and at the Corporation's election provides a surety bond or other security, satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after the delivery of such certificates, or the agreement to indemnify in the case of a lost certificate, issue and deliver to the holder of the shares of Preferred Stock being converted, a certificate or certificates for the number of shares of Common Stock to which the holder is entitled and a check payable to the holder for any cash due with respect to fractional shares.

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

(i) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock below the Conversion Price. If the Corporation issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(d)(i)(D)) without consideration or for a consideration per share less than the Conversion Price for a given series of Preferred Stock in effect immediately prior to such issuance, then and in such event, the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest hundredth of a

cent) as set forth herein, unless otherwise provided in this Section 4

(A) Adjustment Formula Whenever the Conversion Price for a given series of Preferred Stock is adjusted pursuant to this Section 4(d)(i), the new Conversion Price for such series of Preferred Stock shall be determined by multiplying the initial Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue (the "Common Stock Outstanding") plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price for such series of Preferred Stock in effect immediately prior to such issue, and the denominator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of this paragraph, the number of shares of Common Stock Outstanding shall be deemed to include all Common Stock issued and outstanding, any Common Stock issuable upon conversion of issued and outstanding Preferred Stock, and any Common Stock issuable upon exercise or conversion of all other outstanding Convertible Securities and Options whether vested or unvested and whether or not immediately exercisable (assuming conversion of Convertible Securities issuable upon exercise of Options therefor)

(B) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

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

(2) "Original Issue Date" shall mean the date on which the first share of Series B Preferred was issued by the Corporation

(3) "Convertible Securities" shall mean instruments of indebtedness or securities convertible into or exchangeable for Common Stock including without limitation, the Preferred Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or deemed to be issued pursuant to Section 4(d)(i)(D) below) by the Corporation after the Original Issue Date, other than as follows:

(I) upon conversion of shares of Preferred Stock;

(II) shares of capital stock, or Options to purchase capital stock, issued to officers, directors, employees of and service providers to the Corporation pursuant to plans or arrangements approved by the board of directors, including the approval of at least two (2) Preferred Directors;

(III) as a dividend or other distribution on the Preferred Stock, or any other event for which adjustment is made pursuant to Section 4(d)(ii), (e) or (f);

(IV) capital stock, or Options to purchase capital stock, issued to financial institutions, lenders or lessors in connection with bona fide commercial credit arrangements, equipment financings, commercial property leases, or similar transactions, the terms of which have been approved by the board of directors including the approval of at least two (2) Preferred Directors;

(V) capital stock or Options to purchase capital stock issued in connection with bona fide acquisitions, mergers, strategic partnership transactions or similar transactions, the terms of which have been approved by the board of directors, including the approval of at least two (2) Preferred Directors;

(VI) shares of capital stock issued or issuable in a Qualified IPO;

(VII) Common Stock issued or deemed issued pursuant to Section 4(d)(i)(D) as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of this Section 4(d);

(VIII) if holders of seventy-five percent (75%) of Preferred Stock then outstanding agree in writing that such shares shall not constitute Additional Shares of Common Stock;

(IX) upon the exercise or conversion of Options or Convertible Securities that were outstanding prior to the Original Issue Date; or

(X) by way of dividend or other distributions on securities referred to in subsections (I) through (IX) above.

(C) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a given series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for such series of Preferred Stock in effect immediately prior to such issuance.

(D) Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of any holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and

Options for Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

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

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, then the Conversion Price for each affected series of Preferred Stock computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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

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

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation upon the issuance of the Convertible Securities with respect to which such Options were actually exercised; and

(4) no readjustment pursuant to this Section 4(d)(i)(D) shall have the effect of increasing the Conversion Price for any series of Preferred Stock to an amount which exceeds the lesser of (x) the Conversion Price for such series of Preferred Stock on the original adjustment date, or (y) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date, and no readjustment shall affect Common Stock issued on conversion of Preferred Stock prior to such readjustment

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

(1) Cash and Property. Such consideration shall:

(I) Insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation prior to amounts paid or payable for accrued interest and prior to any commissions or expenses paid by the Corporation;

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

(III) if Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received for the Additional Shares of Common Stock, computed as provided in subsections (I) and (II) above, as determined in good faith by the board of directors

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4(d)(i)(D) in respect of Options and Convertible Securities shall be determined by dividing:

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

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the

exercise of such Options or the conversion or exchange of such Convertible Securities.

(ii) Adjustments for Stock Dividends, Combinations or Splits.

If the outstanding shares of Common Stock are subdivided, by stock split or otherwise, into a greater number of shares of Common Stock, or if the Corporation shall declare or pay any dividend on the Common Stock payable in shares of Common Stock, then the Conversion Price for each series of Preferred Stock in effect prior to such event shall be proportionately decreased upon the occurrence of such event. If the outstanding shares of Common Stock are combined or consolidated, by reclassification, reverse stock split or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for each series of Preferred Stock in effect prior to such event shall be proportionately increased upon the occurrence of such event.

(e) Adjustments for Other Distributions.

If the Corporation fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities of the Corporation other than shares of Common Stock (excluding any distribution in which the Preferred Stock participates on an as-converted basis, and any distribution for which adjustment is otherwise made pursuant to this Section 4), then in each such case provision shall be made so that the holders of Preferred Stock receive upon conversion, in addition to the Common Stock issuable upon conversion of their shares, the property or other securities of the Corporation that they would otherwise have received had their shares of Preferred Stock been converted into Common Stock immediately prior to such event and had they thereafter retained such securities, subject to all other adjustments called for during such period under this Section 4.

(f) Adjustments for Reclassification, Exchange and Substitution.

If the Common Stock is changed into the same or a different number of shares of any other class or series of stock, whether by capital reorganization, reclassification or otherwise (other than a Deemed Liquidation under Section 2, and events for which adjustment is made pursuant to Sections 4(d)(ii) or 4(e) above), the Conversion Price for each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization, reclassification or change, be adjusted such that the Preferred Stock shall be convertible into, in lieu of the Common Stock which the holders thereof would otherwise have been entitled to receive, a number of shares of such other class or series of capital stock equivalent to the number of shares of such other class or series of capital stock that such holders would have been entitled to receive in such reclassification, capital reorganization or change for the number of shares of Common Stock that the holders would have been entitled to receive upon conversion of their Preferred Stock immediately prior to such reclassification, capital reorganization or change.

(g) No Impairment.

The Corporation will not without first obtaining the consent of the holders of seventy-five percent (75%) of the outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section 4(d) by the Corporation, but will at all times in good faith assist in the carrying out of

all the provisions of this Section 4(d) and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Preferred Stock under this Section 4 against impairment

(h) Certificate as to Adjustments The Corporation, at its expense, shall promptly compute any Conversion Price adjustments and provide each holder of Preferred Stock a certificate describing such adjustment and showing in detail the facts upon which such adjustment is based. If requested in writing by any holder of Preferred Stock, the Corporation shall provide such holder a certificate describing any Conversion Price adjustments, the current Conversion Price and the amount of Common Stock or other property issuable upon conversion of the shares of Preferred Stock held by such holder.

(i) Notices of Record Date If the Corporation shall propose at any time:

(A) to declare any dividend or distribution upon its Common Stock other than a distribution payable solely in Common Stock;

(B) to offer for subscription pro rata to the holders of any class or series of its capital stock any additional shares of capital stock of any class or series or other rights;

(C) to effect any reclassification or recapitalization of its Common Stock; or

(D) to effect any liquidation or winding up of the Corporation, including, without limitation, a Deemed Liquidation of the Corporation;

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock:

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

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

Each such written notice shall be delivered personally or given by first class mail, postage prepaid, addressed to the holders of Preferred Stock at the addresses for such stockholders as shown on the books of the Corporation.

(j) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the 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 the 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 Amended and Restated Certificate of Incorporation

5. Voting

(a) General Except as expressly provided by this Certificate of Incorporation or as required by law, the holders of Preferred Stock shall have the same voting rights as the holders of the 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 then be converted. Fractional votes shall not be permitted. Any fractional voting rights resulting from the above formula (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 of votes (with one-half being rounded upward).

(b) Election of Directors.

(i) Until the date upon which the Preferred Stock is automatically converted in accordance with Section 4(b) above; (w) the holders of the Series A Preferred Stock, voting as a separate class on an as-converted basis, shall be entitled to elect two (2) members of the board of directors (the "*Series A Directors*"), (x) the holders of the Series B Preferred Stock, voting as a separate class on an as-converted basis, shall be entitled to elect one (1) member of the board of directors (the "*Series B Directors*") and together with the Series A Directors, collectively referred to herein as the "*Preferred Directors*"), (y) the holders of Common Stock voting together as a separate class (without the vote of the holders of Preferred Stock) shall be entitled to elect one (1) member of the board of directors, who shall be the Chief Executive Officer of the Corporation (the "*Common Director*") and (z) the holders of the Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one (1) member of the board of directors (the "*Mutual Director*"). Following an automatic conversion of the Preferred Stock in accordance with Section 4(b), the holders of the Common Stock shall be entitled to elect all

of the members of the board of directors

(ii) In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to Section 5(b)(1), the remaining directors so elected by that class or series may by affirmative vote of a majority thereof (or the remaining director so elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

6. Protective Provisions

(a) This Corporation shall not, without the approval of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding Series B Preferred, voting as a separate class, directly or indirectly, by way of merger or otherwise, take any action that:

(i) effects any liquidation or winding up of the Corporation, including without limitation, a Deemed Liquidation of the Corporation at a price per share to the Series B Preferred of less than \$1.13125 (as adjusted for any stock dividends, combinations or splits with respect to such shares);

(ii) amends the Corporation's Certificate of Incorporation in a manner that adversely affects the preferences or rights of the Series B Preferred; or

(iii) increase the authorized number of shares of Series B Preferred;

(b) This Corporation shall not, without the approval of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding Series A Preferred, voting as a separate class, directly or indirectly, by way of merger or otherwise, take any action that amends the Corporation's Certificate of Incorporation in a manner that adversely affects the preferences or rights of the Series A Preferred

(c) This Corporation shall not, without the approval of the holders of at least sixty percent (60%) of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted basis, directly or indirectly, by way of merger or otherwise, take any action that:

(i) authorizes or obligates the Corporation to pay any dividend or make any other distribution in respect of the Corporation's capital stock (other than a dividend payable solely in shares of Common Stock);

(ii) authorizes or issues, or obligates the Corporation to sell or issue (by reclassification or otherwise) any new class or series of securities;

(iii) amends the Corporation's Certificate of Incorporation or bylaws;

(iv) redeems or repurchases any shares of capital stock (excluding repurchases at cost of Common Stock upon termination of an officer, employee, director or service provider pursuant to plans and arrangements previously approved by the board of directors);

(v) effects a change to the authorized number of directors;

(vi) effects any liquidation or winding up of the Corporation, including, without limitation, a Deemed Liquidation of the Corporation;

(vii) effects an initial public offering of the Corporation's capital stock; or

(viii) effects the issuance of any equity securities by a subsidiary of the Corporation to any third party.

7. Status of Converted Shares

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

(C) Rights, Preferences, Privileges and Restrictions of Common Stock

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock or the holders thereof are as follows:

1 Dividends. Subject to the prior rights of holders of all classes of stock at the time outstanding having superior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if 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. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Division (B) above.

3. **Redemption.** The Common Stock is not redeemable other than at the sole discretion of the Corporation, pursuant to the terms of a written plan, or agreements with individual stockholders that provide for repurchases by the Corporation in connection with the termination of such stockholder's services to the Corporation.

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

ARTICLE V

(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 V, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article V, shall eliminate or reduce the effect of this Article V in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article V, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VI

Subject to Section 6 of Division (B) of Article IV, the board of directors of the Corporation is expressly authorized to make, alter or repeal bylaws of the Corporation, but the stockholders may make additional bylaws and may alter or repeal any bylaw whether adopted by them or otherwise.

ARTICLE VII

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

ARTICLE VIII

The Corporation is to have perpetual existence.

ARTICLE IX

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

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