

**PATENT ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	11/14/2007

**CONVEYING PARTY DATA**

Name	Execution Date
Cosmix Corporation	11/14/2007

**RECEIVING PARTY DATA**

Name:	Kosmix Corporation
Street Address:	444 Castro Street
Internal Address:	Suite 109
City:	Mountain View
State/Country:	CALIFORNIA
Postal Code:	94041

**PROPERTY NUMBERS Total: 1**

Property Type	Number
Application Number:	11332846

**CORRESPONDENCE DATA**

Fax Number: (408)973-2595  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 408-973-2585  
 Email: vpula@ip-patent.com  
 Correspondent Name: Van Pelt, Yi & James LLP  
 Address Line 1: 10050 N. Foothill Blvd.  
 Address Line 2: Suite 200  
 Address Line 4: Cupertino, CALIFORNIA 95014

ATTORNEY DOCKET NUMBER:	COSMP007
NAME OF SUBMITTER:	Lee Van Pelt

Total Attachments: 20

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**PATENT  
 REEL: 021391 FRAME: 0775**

**CH \$40.00 11332846**

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**RESTATED CERTIFICATE OF INCORPORATION  
OF  
KOSMIX CORPORATION**

Kosmix Corporation, a Delaware corporation, hereby certifies that:

1. The name of the corporation is Kosmix Corporation. The date of filing its original Certificate of Incorporation with the Secretary of State was June 23, 2004 under the name Cosmix Corporation.

2. This Restated Certificate of Incorporation of the corporation attached hereto as Exhibit "1", which is incorporated herein by this reference, and which restates, integrates and further amends the provisions of the Certificate of Incorporation of this corporation as previously amended or supplemented, has been duly adopted by the corporation's Board of Directors and a majority of the stockholders in accordance with Sections 242 and 245 of the Delaware General Corporation Law, with the approval of the corporation's stockholders having been given by written consent without a meeting in accordance with Section 228 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, said corporation has caused this Restated Certificate of Incorporation to be signed by its duly authorized officer and the foregoing facts stated herein are true and correct.

Dated: November 14, 2007

KOSMIX CORPORATION

By: /s/ Anand Rajaraman

Name: Anand Rajaraman

Title: Chief Executive Officer

**EXHIBIT "1"**  
**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**KOSMIX CORPORATION**

**ARTICLE I: NAME**

The name of the corporation is Kosmix Corporation.

**ARTICLE II: REGISTERED AGENT**

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, DE 19901. The name of its registered agent at that address is Incorporating Services, Ltd.

**ARTICLE III: PURPOSE**

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 of the State of Delaware.

**ARTICLE IV: AUTHORIZED SHARES**

1. **Authorization of Shares.** This corporation is authorized to issue two (2) classes of shares, designated "Common Stock" and "Preferred Stock". The total number of shares of Common Stock authorized to be issued is 63,150,000 shares, \$0.00001 par value per share. The total number of shares of Preferred Stock authorized to be issued is 34,551,117 shares, \$0.00001 par value per share, 10,992,666 of which are designated as "Series A Preferred Stock", 10,298,643 of which are designated as "Series B Preferred Stock", 10,109,804 of which are designated as "Series C Preferred Stock" and 3,150,000 of which are designated as "Series D Preferred Stock".

**ARTICLE V: TERMS OF CLASSES AND SERIES**

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

1. **Definitions.** For purposes of this Article V, the following definitions apply:
  - 1.1 "**Board**" shall mean the Board of Directors of the Corporation.
  - 1.2 "**Corporation**" shall mean Kosmix Corporation.

1.3 "**Common Stock**" shall mean the Common Stock, \$0.00001 par value, of the Corporation.

1.4 "**Common Stock Dividend**" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

1.5 "**Dividend Rate**" shall mean \$0.0052514 per share per annum for the Series A Preferred Stock, \$0.051961 per share per annum for the Series B Preferred Stock, \$0.1273475 per share per annum for the Series C Preferred Stock and \$0.2429000 per share per annum for the Series D Preferred Stock (in each case as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or the like, with respect to each such Series of Preferred Stock).

1.6 "**Original Issue Date**" shall mean the date on which the first share of (i) Series A Preferred Stock is issued by the Corporation for the Series A Preferred Stock; (ii) Series B Preferred Stock is issued by the Corporation, for the Series B Preferred Stock; (iii) Series C Preferred Stock is issued by the Corporation, for the Series C Preferred Stock; and (iv) Series D Preferred Stock is issued by the Corporation, for the Series D Preferred Stock.

1.7 "**Original Issue Price**" shall mean \$0.075020 per share for the Series A Preferred Stock, \$0.742298 per share for the Series B Preferred Stock, \$1.81925 per share for the Series C Preferred Stock and \$3.470 per share for the Series D Preferred Stock. Each Original Issue Price shall be as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or the like, with respect to such series of Preferred Stock; *provided however* that such price shall not be as so adjusted for the purposes of Section 5.3 below regarding the calculation of the conversion ratio of the Preferred Stock.

1.8 "**Permitted Repurchases**" shall mean the repurchase by the Corporation of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Corporation or a subsidiary that are subject to restricted stock purchase agreements or stock option exercise agreements under which the Corporation has the option to repurchase such shares: (i) at cost, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at the fair market value pursuant to the Corporation's exercise of a right of first refusal to repurchase such shares provided that such repurchase is approved by the Board.

1.9 "**Preferred Stock**" shall mean the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock.

1.10 "**Series A Preferred Stock**" shall mean the Series A Preferred Stock, \$0.00001 par value per share, of the Corporation.

1.10 "**Series B Preferred Stock**" shall mean the Series B Preferred Stock, \$0.00001 par value per share, of the Corporation.

1.11 "**Series C Preferred Stock**" shall mean the Series C Preferred Stock, \$0.00001 par value per share, of the Corporation.

1.12 "*Series D Preferred Stock*" shall mean the Series D Preferred Stock, \$0.00001 par value per share, of the Corporation.

1.13 "*Subsidiary*" shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Corporation or by one or more of such subsidiary corporations.

## 2. Dividend Rights.

2.1 Preferred Stock. In each calendar year, the holders of the then outstanding Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Corporation legally available therefor, noncumulative dividends at the annual Dividend Rate for each such series of Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate for each such series of Preferred Stock shall have first been paid or declared and set apart for payment to the holders of each such series of Preferred Stock during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Payments of any dividends to the holders of each such series of Preferred Stock shall be paid pro rata, on an equal priority, pari passu basis according to their respective dividend preferences as set forth herein. Dividends on the Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Preferred Stock by reason of the fact that the Corporation shall fail to declare or pay dividends on the Preferred Stock in the amount of the annual Dividend Rate for each such series of Preferred Stock or in any other amount in any calendar year or any fiscal year of the Corporation, whether or not the earnings of the Corporation in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

2.2 No Participation Rights. If, after dividends in the full preferential amounts specified in this Section 2 for the Preferred Stock have been paid or declared and set apart in any calendar year of the Corporation, the Board shall declare additional dividends out of funds legally available therefor in that calendar year, then such additional dividends shall be declared solely on the Common Stock.

2.3 Non-Cash Dividends. Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

3. Liquidation Rights. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets that may be legally distributed to the Corporation's stockholders (the "*Available Funds and Assets*") shall be distributed to stockholders in the following manner:

3.1 Liquidation Preferences. The holders of each share of Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to

to the Original Issue Price for each such series of Preferred Stock, respectively, plus all declared but unpaid dividends thereon. If upon any liquidation, dissolution or winding up of the Corporation the Available Funds and Assets shall be insufficient to permit the payment to holders of the Preferred Stock of their full preferential amounts described in this subsection, then all the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Preferred Stock pro rata, on an equal priority, pari passu basis, in proportion to their respective liquidation preferences as set forth herein.

3.2 Remaining Assets. If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Preferred Stock of their full preferential amounts described above in this Section 3, then all such remaining Available Funds and Assets shall be distributed solely among the holders of the then outstanding Common Stock pro rata according to the number of shares of Common Stock held by each holder thereof.

3.3 Merger or Sale of Assets. Unless otherwise approved by vote or written consent of the holders of at least 78% of the then outstanding shares of Preferred Stock, voting as a single class on an as-if-converted basis, each of the following transactions shall be deemed to be a liquidation, dissolution or winding up of the Corporation as those terms are used in this Section 3: (a) any reorganization, consolidation, merger or similar transaction or series of related transactions (each, a "*Combination Transaction*") in which the Corporation is a constituent corporation or is a party if, as a result of such Combination Transaction, the voting securities of the Corporation that are outstanding immediately prior to the consummation of such Combination Transaction (other than any such securities that are held by an "Acquiring Stockholder", as defined below) do not represent, or are not converted into, securities of the surviving corporation of such Combination Transaction (or such surviving corporation's parent corporation if the surviving corporation is owned by the parent corporation) that, immediately after the consummation of such Combination Transaction, together possess at least a majority of the total voting power of all securities of such surviving corporation (or its parent corporation, if applicable) that are outstanding immediately after the consummation of such Combination Transaction, including securities of such surviving corporation (or its parent corporation, if applicable) that are held by the Acquiring Stockholder; (b) a sale of all or substantially all of the assets of the Corporation, or (c) the exclusive license of intellectual property that is material to the Company's business (any such transaction under clauses (a), (b), or (c), unless waived by the requisite approval, a "*Liquidation Event*"). For purposes of this subsection 3.3, an "*Acquiring Stockholder*" means a stockholder or stockholders of the Corporation that, together with any affiliates thereof, (i) merges or combines with the Corporation in such Combination Transaction or (ii) owns or controls a majority of another corporation that merges or combines with the Corporation in such Combination Transaction.

3.4 Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as reasonably determined by the Board in good faith, except that any securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

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

(i) unless otherwise specified in a definitive agreement for the acquisition of the Corporation, if the securities are then traded on a national securities exchange or the Nasdaq National Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the distribution; and

(ii) if (i) above does not apply but the securities are actively traded over-the-counter, then, unless otherwise specified in a definitive agreement for the acquisition of the Corporation, the value shall be deemed to be the average of the closing bid prices over the thirty (30) calendar day period ending three (3) trading days prior to the distribution; and

(iii) if there is no active public market as described in clauses (i) or (ii) above, then the value shall be the fair market value thereof, as determined in good faith by the Board of the Corporation.

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

#### 4. Voting Rights.

4.1 Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

4.2 Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such holder's shares of Preferred Stock could, in the aggregate, be converted pursuant to the provisions of Section 5 below at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited.

4.3 General. Subject to the other provisions of this Certificate of Incorporation, each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

4.4 Board Size. The authorized number of directors of the Corporation's Board shall be six (6). The Corporation shall not alter the authorized number of directors in its Certificate of Incorporation, Bylaws or otherwise, without first obtaining the written consent, or affirmative vote at a meeting, of the holders of at least 78% of the then outstanding shares of Preferred Stock, voting as a single class on an as-if-converted basis.



#### 4.5 Board of Directors Election and Removal.

(a) Election of Directors. (i) So long as at least two million (2,000,000) shares of Series A Preferred Stock are outstanding (such number of shares being subject to proportional adjustments to reflect combinations or subdivisions of such Preferred Stock or dividends declared in shares of such stock), the holders of the Series A Preferred Stock, voting as a separate series, shall be entitled to elect one (1) director of the Corporation; (ii) so long as at least two million (2,000,000) shares of Series B Preferred Stock are outstanding (such number of shares being subject to proportional adjustments to reflect combinations or subdivisions of such Preferred Stock or dividends declared in shares of such stock), the holders of the Series B Preferred Stock, voting as a separate series, shall be entitled to elect one (1) director of the Corporation; (iii) so long as at least two million (2,000,000) shares of Series C Preferred Stock are outstanding (such number of shares being subject to proportional adjustments to reflect combinations or subdivisions of such Preferred Stock or dividends declared in shares of such stock), the holders of the Series C Preferred Stock, voting as a separate series, shall be entitled to elect one (1) director of the Corporation; (iv) the holders of the Common Stock, voting as a separate class, shall be entitled to elect one (1) director of the Corporation; (v) the holders of separate majorities of (A) the Preferred Stock voting together as a single class on an as-converted to Common Stock basis and (B) the Common Stock voting as a separate class, shall be entitled to elect one (1) director of the Corporation; and (vi) the holders of the Preferred Stock and the Common Stock, voting together as a single class on an as-converted to Common Stock basis shall be entitled to elect the remaining directors of the Corporation.

#### (b) Quorum; Required Vote.

(i) Quorum. At any meeting held for the purpose of electing directors, the presence in person or by proxy (A) of the holders of a majority of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock then outstanding, respectively, shall constitute a quorum for the election of directors to be elected solely by the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock, respectively, (B) of holders of a majority of the voting power of (1) all the then-outstanding shares of Preferred Stock voting together as a single class on an as-converted to Common Stock basis and (2) all the then-outstanding shares of Common Stock voting as a separate class, shall constitute a quorum for the election of the directors to be elected by separate majorities of the Common Stock and Preferred Stock, and (C) of holders of a majority of the voting power of all the then-outstanding shares of Preferred Stock and Common Stock, voting as a single class on an as-converted to Common Stock basis shall constitute a quorum for the election of the directors to be elected jointly by the holders of the Preferred Stock and the Common Stock.

(ii) Required Vote. With respect to the election of any director or directors by the holders of the outstanding shares of a specified class or classes of stock given the right to elect such director or directors pursuant to paragraph 4.5(a) above (the "*Specified Stock*"), that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes (on an as-converted basis) of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the

case of any such vote taken by written consent without a meeting, are elected by the written consent of the holders of a majority of outstanding shares of such Specified Stock.

(c) Vacancy. If there shall be any vacancy in the office of a director elected or to be elected by the holders of any Specified Stock, then a director to hold office for the unexpired term of such directorship may be elected by either: (i) a majority of the remaining director or directors (if any) in office that were so elected by the holders of such Specified Stock, by the affirmative vote of a majority of such directors (or by the sole remaining director elected by the holders of such Specified Stock if there be but one), unless the vacancy is due to the removal of a director, in which case the vacancy can only be filled by the stockholders or (ii) the required vote of holders of the shares of such Specified Stock specified in subparagraph 4.5(b)(ii) above that are entitled to elect such director.

(d) Removal. Subject to Section 141(k) of the Delaware General Corporation Law, any director who shall have been elected to the Board by the holders of any Specified Stock, or by any director or directors elected by holders of any Specified Stock as provided in paragraph 4.5(c), may be removed during his or her term of office, without cause, by, and only by, the affirmative vote of shares representing a majority of the voting power, on an as-converted basis, of all the outstanding shares of such Specified Stock entitled to vote, given either at a meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders without a meeting, and any vacancy created by such removal may be filled only in the manner provided in paragraph 4.5(c).

(e) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this subsection 4.5, shall be held in accordance with the procedures and provisions of the Corporation's Bylaws, the Delaware General Corporation Law and applicable law regarding stockholder meetings and stockholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

(f) Termination. Notwithstanding anything in this subsection 4.5 to the contrary, the provisions of this subsection 4.5 shall cease to be of any further force or effect upon the earliest to occur of: (i) as to subparagraph 4.5(a)(i) only, the first date on which the total number of outstanding shares of Series A Preferred Stock is less than two million (2,000,000) shares (such number of shares being subject to proportional adjustment to reflect combination or subdivisions of such Preferred Stock or dividends declared in shares of such stock); (ii) as to subparagraph 4.5(a)(ii) only, the first date on which the total number of outstanding shares of Series B Preferred Stock is less than two million (2,000,000) shares (such number of shares being subject to proportional adjustment to reflect combination or subdivisions of such Preferred Stock or dividends declared in shares of such stock); (iii) as to subparagraph 4.5(a)(iii) only, the first date on which the total number of outstanding shares of Series C Preferred Stock is less than two million (2,000,000) shares (such number of shares being subject to proportional adjustment to reflect combination or subdivisions of such Preferred Stock or dividends declared in shares of such stock); (iv) upon the consummation of a Combination Transaction or (v) upon the election of the Corporation to wind up its affairs and dissolve.

4.6 Vote by Ballot. Election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

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

5.1 Optional Conversion.

(a) At the option of the holder thereof, each share of Preferred Stock shall be convertible, at any time or from time to time prior to the close of business on the business day before any date fixed for redemption of such share, into fully paid and nonassessable shares of Common Stock as provided herein.

(b) Each holder of Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Preferred Stock being converted. Alternatively, such holder of Preferred Stock may notify the Corporation or its transfer agent that such certificates have been lost, stolen, or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation for any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation as such office that he elects to convert the same (the "*Conversion Notice*"). Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion in to fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Preferred Stock to be converted or the receipt of the Conversion Notice, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If a conversion election under this subsection 5.1 is made in connection with an underwritten offering of the Corporation's securities pursuant to the Securities Act of 1933, as amended (which underwritten offering does not cause an automatic conversion pursuant to subsection 5.2 to take place), or a Liquidation Event, the conversion may, at the option of the holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing of such transaction, in which event the holders making such elections who are entitled to receive Common Stock upon conversion of their Preferred Stock shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such transaction.

5.2 Automatic Conversion.

(a) Each share of Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein: (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which the aggregate public offering

price (before deduction of underwriters' discounts and commissions) equals or exceeds \$30,000,000 and the public offering price per share of which equals or exceeds \$3.6385 per share before deduction of underwriters' discounts and commissions (such price per share of Common Stock to be appropriately adjusted to reflect Common Stock Events (as defined in subsection 5.4)) (a "**Qualified IPO**"); or (ii) upon the date specified by written consent, received by the Corporation, of (w) the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock, (x) the holders of not less than a majority of the then outstanding shares of Series B Preferred Stock, (y) the holders of not less than a majority of the then outstanding shares of Series C Preferred Stock and (z) the holders of not less than a majority of the then outstanding shares of Series D Preferred Stock, to the conversion of all then outstanding Preferred Stock under this Section 5.2.

(b) Upon the occurrence of any event specified in subparagraph 5.2(a)(i) or (ii) above, the outstanding shares of Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock.

5.3 Conversion Price. Each share of Preferred Stock shall be convertible in accordance with subsection 5.1 or subsection 5.2 above into the number of shares of Common Stock which results from dividing the Original Issue Price for each such series of Preferred Stock by the conversion price for such series of Preferred Stock that is in effect at the time of conversion (the "**Conversion Price**"). The initial Conversion Price for the Series A Preferred Stock shall be the Original Issue Price for the Series A Preferred Stock. The initial Conversion Price for the Series B Preferred Stock shall be the Original Issue Price for the Series B Preferred Stock. The initial Conversion Price for the Series C Preferred Stock shall be the Original Issue Price for the Series C Preferred Stock. The initial Conversion Price for the Series D Preferred Stock shall be the Original Issue Price for the Series D Preferred Stock. The Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be subject to adjustment from time to time as provided below. Following each adjustment of the Conversion Price, such adjusted Conversion Price shall remain in effect until a further adjustment of such Conversion Price hereunder.

5.4 Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined), the Conversion Price of each such series of Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of such series of Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price for such series of Preferred Stock. The Conversion Price for a series of Preferred Stock shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term the "**Common Stock Event**" shall mean at any time or from time to time after the Original Issue Date, (i) the issue by the Corporation of additional shares of Common Stock as a dividend or other distribution on outstanding shares of Common Stock, (ii) a subdivision of the outstanding shares of Common Stock (by stock split, payment of a stock dividend, or otherwise) into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.

5.5 Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Original Issue Date the Corporation pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Corporation, other than an event constituting a Common Stock Event, then in each such event provision shall be made so that the holders of the Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Corporation which they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Preferred Stock or with respect to such other securities by their terms.

5.6 Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a reorganization, merger, or consolidation provided for elsewhere in this Section 5), then in any such event each holder of Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

5.7 Reorganizations, Mergers and Consolidations. If at any time or from time to time after the Original Issue Date there is a reorganization of the Corporation (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for

elsewhere in this Section 5) or a merger or consolidation of the Corporation with or into another corporation (except for a Liquidation Event), then, as a part of such reorganization, merger or consolidation, provision shall be made so that the holders of the Preferred Stock thereafter shall be entitled to receive, upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of such successor corporation resulting from such reorganization, merger or consolidation, to which a holder of Common Stock deliverable upon conversion would have been entitled at the time of and pursuant to such reorganization, merger or consolidation. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Preferred Stock after the reorganization, merger or consolidation to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable. This subsection 5.7 shall similarly apply to successive reorganizations, mergers and consolidations.

**5.8 Sale of Shares Below Conversion Price.**

(a) Adjustment Formula. Subject to the last two paragraphs of this subsection 5.8(a), if at any time the Corporation issues or sells, or is deemed by the provisions of this subsection 5.8 to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in subsection 5.4, a dividend or distribution as provided in subsection 5.5 or a recapitalization, reclassification or other change as provided in subsection 5.6, or a reorganization, merger or consolidation as provided in subsection 5.7, for an Effective Price (as hereinafter defined) that is less than the Conversion Price for a series of Preferred Stock in effect immediately prior to such issue or sale (or deemed issue or sale), then, and in each such case, the Conversion Price for such series of Preferred Stock shall be reduced (but in no event increased), as of the close of business on the date of such issue or sale or deemed issue or sale, to the price obtained by multiplying such Conversion Price by a fraction:

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

(ii) The denominator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding immediately prior to such issue or sale plus (B) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).

(b) Certain Definitions. For the purpose of making any adjustment required under this subsection 5.8:

(i) The "*Additional Shares of Common Stock*" shall mean all shares of Common Stock issued by the Corporation, or deemed issued as provided in paragraph 5.8(c) below, whether or not subsequently reacquired or retired by the Corporation, other than:

(A) shares of Common Stock issued or issuable upon conversion of the outstanding shares of the Preferred Stock;

(B) shares of Common Stock or Preferred Stock (and/or options, warrants or rights therefor) that (after the date of this Restated Certificate of Incorporation) are granted or issued hereafter to employees, officers, directors, contractors, consultants or advisers to, the Corporation or any Subsidiary pursuant to incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other compensatory arrangements which are not to be in excess of the 4,291,700 shares (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or the like) reserved for future issuance pursuant to equity incentive plans at the date of filing of this Certificate of Incorporation as such number may be increased from time to time to reflect any shares of Common Stock (A) not issued pursuant to the rights, agreements, options or warrants ("*Unexercised Options*") as a result of termination or cancellation of such Unexercised Options, (B) reacquired by the Company from employees, directors or consultants at cost (or the lesser of cost or fair market values) pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company) (such share figure as adjusted from time to time, the "*Share Pool*"), that are approved by the Board or (C) up to an additional 5,000,000 shares (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or the like) reserved for issuance in the future pursuant to equity incentive plans, unless, for so long as the holders of Preferred Stock are entitled to elect directors, a majority of the directors elected pursuant to Sections 4.5(a)(i), (ii) and (iii), if any (the "*Requisite Director Approval*") approve any such shares in excess of the Share Pool;

(C) shares of Common Stock or Preferred Stock (and/or options, warrants or rights therefor) that (after the date of this Restated Certificate of Incorporation) are issued to parties that are (x) strategic partners investing in connection with a commercial relationship with the Corporation (other than primarily for capital raising purposes) under arrangements approved by the Board (including the Requisite Director Approval) or (y) acquiring equity securities in connection with providing the Corporation with equipment leases, real property leases, loans, credit lines, guaranties of indebtedness, cash price reductions or similar transactions, under arrangements approved by the Board (including the Requisite Director Approval); or

(D) shares of Common Stock or Preferred Stock (and/or options, warrants or rights therefor) that (after the date of this Restated Certificate of Incorporation) are issued pursuant to the acquisition of another corporation or entity by the Corporation by consolidation, merger, purchase of all or substantially all of the assets, or other reorganization in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or more of the equity ownership of such other entity, provided that such transaction or series of transactions has been approved by the Corporation's Board (including the Requisite Director Approval);

(E) shares of Common Stock or Preferred Stock issuable upon exercise of any options, warrants or rights to purchase (other than preemptive rights) any securities of the Company outstanding as of the date of this Amended and Restated Certificate of Incorporation and any securities issuable upon the conversion thereof;

(F) shares of Common Stock issued pursuant to Common Stock Event;

(G) shares of Common Stock issued or issuable in a Qualified IPO; and

(H) shares of Common Stock or Preferred Stock (or options, or warrants or rights to acquire same), issued or issuable hereafter that are (i) approved by the Board, and (ii) approved by the vote of (x) the holders of a majority of the Series A Preferred Stock voting separately as a separate class, (y) the holders of a majority of the Series B Preferred Stock voting separately as a separate class, and (z) the holders of a majority of the Series C Preferred Stock and Series D Preferred Stock voting together as a single class, as being excluded from the definition of "Additional Shares of Common Stock" under this subparagraph 5.8(b).

(ii) The "*Aggregate Consideration Received*" by the Corporation for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale and without deduction of any expenses payable by the Corporation; (B) to the extent it consists of property other than cash, be computed at the fair value of that property as reasonably determined in good faith by the Board; and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options (as hereinafter defined) to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.

(iii) "*Common Stock Equivalents Outstanding*" shall mean the number of shares of Common Stock that is equal to the sum of (A) all shares of Common Stock of the Corporation that are outstanding at the time in question, plus (B) all shares of Common Stock of the Corporation issuable upon conversion of all shares of Preferred Stock or other Convertible Securities that are outstanding at the time in question, plus (C) all shares of Common Stock of the Corporation that are issuable upon the exercise of Rights or Options that are outstanding at the time in question assuming the full conversion or exchange into Common Stock of all such Rights or Options that are Rights or Options to purchase or acquire Convertible Securities into or for Common Stock.

(iv) "*Convertible Securities*" shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.



(v) The "*Effective Price*" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Corporation under this subsection 5.8, into the Aggregate Consideration Received, or deemed to have been received, by the Corporation under this subsection 5.8, for the issue of such Additional Shares of Common Stock; and

(vi) "*Rights or Options*" shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(c) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of any series of Preferred Stock required under this subsection 5.8, if the Corporation issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for a series of Preferred Stock, then the Corporation shall be deemed to have issued (each a "*Deemed Issuance*"), at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amounts of such consideration cannot be ascertained in such Deemed Issuance, but are a function of antidilution or similar protective clauses, then the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(ii) if the minimum amount of consideration payable to the Corporation upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced (and this subsection 5.8 shall be reapplied); and

~~(iii) if the minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities (and this subsection 5.8 shall be reapplied).~~

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that were actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

5.9 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for a series of Preferred Stock, the Corporation, at its expense, shall cause its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Preferred Stock at the holder's address as shown in the Corporation's books.

5.10 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay the holder cash equal to the product of such fraction multiplied by the then effective Conversion Price for such share as determined in good faith by the Board as of the date of conversion; provided however that the Corporation shall first aggregate all fractional shares to which such holder is entitled.

5.11 Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5.12 Notices. Any notice required by the provisions of these Certificate of Incorporation to be given to the holders of shares of the Preferred Stock shall be deemed given upon the earlier of (i) upon personal delivery to the party to be notified, (ii) three (3) days after deposit in the United States mail, by certified or registered mail, return receipt requested, postage

prepaid, or (iii) delivery by a recognized express courier, fees prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

5.13 No Impairment. The Corporation shall not intentionally avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the rights, preferences and privileges of the holders of the Preferred Stock against impairment.

5.14 Notices of Record Date. In the event that this Corporation shall propose at any time:

(a) to declare any transfer of cash or other property to its holders of Common Stock without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of Common Stock for cash or property, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(c) to voluntarily liquidate or dissolve or to enter into any transaction or series of transactions constituting a Liquidation Event;

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock at least 20 days' prior written notice of the date on which a record shall be taken for such distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such distribution) or for determining rights to vote in respect of the matters referred to in (b) and (c) above. Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation. The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of a majority of the Preferred Stock, voting together as a single class.

## 6. Restrictions and Limitations.

6.1 Class Protective Provisions. So long as at least 3,000,000 shares of Preferred Stock remain outstanding, the Corporation shall not, including by amendment hereof, amendment of the Corporation's Bylaws, or by merger, consolidation, reorganization, recapitalization, contract or otherwise, without the approval, by vote or written consent, of the holders of at least 78% of the then outstanding shares of Preferred Stock, voting as a single class on an as-if-converted basis:

(a) alter or change the rights, preferences, privileges or powers of, or restrictions of the Preferred Stock or any series thereof so as to adversely affect such Preferred Stock or any series thereof;

(b) amend, alter, repeal or waive any provision of the Certificate of Incorporation or Bylaws so as to adversely affect the rights of any series of Preferred Stock;

(c) increase or decrease the authorized number of shares of Common Stock, Preferred Stock or any series of Preferred Stock;

(d) authorize any capital stock (or reclassify any outstanding shares of capital stock of the Corporation into shares) having rights or preferences senior to or being on a parity with any series of Preferred Stock as to dividend rights or liquidation, redemption or voting preferences;

(e) reorganize, consolidate or merge with or into any corporation or effect any transaction or series of related transactions if such transaction or series of related transactions would result in the stockholders of the Corporation immediately prior to such transaction or series of related transactions holding less than a majority of the voting power of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation) of such transaction or series of related transactions (provided however this subsection shall not apply to a merger affected exclusively for the purpose of changing the domicile of the corporation);

(f) sell, convey or otherwise dispose of all or substantially all the Corporation's assets or exclusively license substantially all of the Company's material intellectual property in a single transaction or series of related transactions;

(g) declare or pay any dividends (other than dividends payable solely in shares of its own Common Stock) on or declare or make any other distribution, purchase, redemption or acquisition (other than Permitted Repurchases), directly or indirectly, on account of any shares of Preferred Stock or Common Stock now or hereafter outstanding;

(h) amend the Corporation's Certificate of Incorporation or By-laws to change the authorized number of members of its Board;

(i) liquidate or dissolve; or

(j) take any action that results in the redemption or repurchase of any shares of Common Stock or Preferred Stock except for Permitted Repurchases.

## 7. Miscellaneous.

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

7.2 Preemptive Rights. No stockholder of the Corporation shall have a right to purchase shares of capital stock of the Corporation sold or issued by the Corporation except to the extent that such a right may from time to time be set forth in a written agreement between the Corporation and such stockholder.

## ARTICLE VI: AMENDMENT OF BYLAWS

Except as set forth herein, the Board shall have the power to adopt, amend, or repeal Bylaws of the corporation.

## ARTICLE VII: DIRECTOR ELECTION BY BALLOT

Election of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.

## ARTICLE VIII: DIRECTOR LIABILITY

1. **Limitation of Liability.** To the fullest extent permitted by law, no director of the corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. **Change in Rights.** Neither any amendment nor repeal of this Article VIII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VIII, shall eliminate, reduce, or otherwise adversely affect any limitation on the personal liability of a director of the corporation existing at the time of such amendment, repeal, or adoption of such an inconsistent provision.

## ARTICLE IX: CREDITOR AND STOCKHOLDER COMPROMISES

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of §291 of Title 8 of the Delaware General Corporation Law or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under §279 of Title 8 of the Delaware General Corporation Law, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

## ARTICLE X: EXCLUDED OPPORTUNITY

The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or that otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

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