

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
CONVEYING PARTY DATA	
Name	Execution Date
NxLight, Inc.	10/16/2007
RECEIVING PARTY DATA	
Name:	Contractpal, Inc.
Street Address:	274 West Center
City:	Orem
State/Country:	UTAH
Postal Code:	84057
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	10366272
CORRESPONDENCE DATA	
Fax Number:	(801)578-6999
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	801-328-3131
Email:	kdchristensen@stoel.com
Correspondent Name:	Kory D. Christensen
Address Line 1:	Stoel Rives LLP
Address Line 2:	201 S. Main Street, Suite 1100
Address Line 4:	Salt Lake City, UTAH 84111
ATTORNEY DOCKET NUMBER:	50853/9
NAME OF SUBMITTER:	Kory D. Christensen
<p>Total Attachments: 17 source=Name_Change_Document_to_CPL#page1.tif source=Name_Change_Document_to_CPL#page2.tif source=Name_Change_Document_to_CPL#page3.tif</p>	

OP \$40.00 10366272

source=Name_Change_Document_to_CPL#page4.tif
source=Name_Change_Document_to_CPL#page5.tif
source=Name_Change_Document_to_CPL#page6.tif
source=Name_Change_Document_to_CPL#page7.tif
source=Name_Change_Document_to_CPL#page8.tif
source=Name_Change_Document_to_CPL#page9.tif
source=Name_Change_Document_to_CPL#page10.tif
source=Name_Change_Document_to_CPL#page11.tif
source=Name_Change_Document_to_CPL#page12.tif
source=Name_Change_Document_to_CPL#page13.tif
source=Name_Change_Document_to_CPL#page14.tif
source=Name_Change_Document_to_CPL#page15.tif
source=Name_Change_Document_to_CPL#page16.tif
source=Name_Change_Document_to_CPL#page17.tif

Delaware

PAGE 1

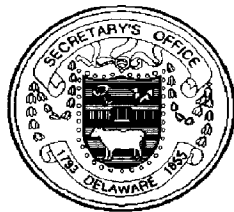
The First State

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 "NXLIGHT, INC.", CHANGING ITS NAME FROM "NXLIGHT, INC." TO "CONTRACTPAL, INC.", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF OCTOBER, A.D. 2007, AT 4:38 O'CLOCK P.M.

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

3681636 8100

071145667



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6111856

DATE: 10-29-07

PATENT
REEL: 022553 FRAME: 0382

**RESTATED & AMENDED
CERTIFICATE OF INCORPORATION
OF
NXLIGHT, INC.**

In accordance with Sections 242 and 245 of Chapter 1 of the General Corporation Law of the State of Delaware, NxLight, Inc., a Delaware corporation (the "Company"), hereby declares and certifies as follows:

1. At a meeting of the Board of Directors of the Company resolutions were adopted proposing the amendment and restatement of the Certificate of Incorporation of the Company, declaring that said amendment and restatement be advisable and calling a meeting of stockholders of the Company for consideration thereof, such amendment and restatement to among other things, change the name of the Company from NxLight, Inc. to ContractPal, Inc., the text of the Restated Certificate of Incorporation (the "Restated Certificate"), being attached hereto and incorporated herein by this reference.
2. Thereafter, pursuant to resolution of the Board of Directors of the Company, an annual meeting of the stockholders of the Company was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware.
3. At such meeting, the Restated Certificate was duly consented to and adopted in accordance with Section 245 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the Restated Certificate.

IN WITNESS WHEREOF, this Restated & Amended Certificate of Incorporation having been executed by the Company on October 16, 2007.

NxLight, Inc.



Robert B. Hicks, President

ARTICLE I

The name of the corporation is ContractPal, Inc. (the "*Company*").

ARTICLE II

The address of the Company's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

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

ARTICLE III

3.1. *Capitalization.*

(a) *Classes of Stock.* The Company is authorized to issue two classes of stock, which shall be designated, respectively, as "*Common Stock*" and "*Preferred Stock*," each with a per share par value of \$0.0001. The total number of shares of stock that the Company shall have authority to issue is 105,000,000, consisting of 65,000,000 shares of Common Stock, and 40,000,000 shares of Preferred Stock.

(b) *Rights, Preferences and Restrictions of Preferred Stock.* The Preferred Stock authorized by this Certificate of Incorporation (the "*Certificate*") may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on (i) the Series A Preferred Stock, which series shall consist of 4,000,000 shares (the "*Series A Preferred Stock*"), and (ii) the Series B Preferred Stock, which series shall consist of 36,000,000 shares (the "*Series B Preferred Stock*"), are as set forth below.

(c) *Definitions.* For purposes of this ARTICLE III, the following definitions shall apply:

(i) "*Conversion Price*" shall mean \$0.19383 per share for the Series A Preferred Stock and \$0.15153 per share for the Series B Preferred Stock (subject to adjustment from time to time as a result of anti-dilution protection pursuant to Section 3.4(d)(iv) hereof or for Recapitalizations and as otherwise set forth elsewhere herein).

(ii) "*Convertible Securities*" shall mean any evidences of indebtedness, shares or other securities (other than shares of Series A or Series B Preferred Stock) convertible into or exchangeable for Common Stock.

(iii) "*Distribution*" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, payable other than in Common Stock, or the purchase or redemption of shares of the Company for cash or property.

other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase; (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Company or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right; or (iii) any other repurchase or redemption of capital stock of the Company approved by the holders of all of the Company's outstanding capital stock (assuming conversion of all outstanding shares of Preferred Stock into shares of Common Stock) and the holders of the Series B Preferred Stock of the Company, voting as separate classes.

(iv) "*Dividend Preference*" shall mean all accrued and unpaid dividends with respect to the Series A Preferred Stock and the Series B Preferred Stock.

(v) "*Dividend Rate*" shall mean, for the Series A Preferred Stock, a one-time, fixed dividend of \$0.015 per share (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) and for the Series B Preferred Stock, a one-time, fixed dividend of \$0.0091 per share (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(vi) "*Liquidation Preference*" shall mean \$0.25 per share for the Series A Preferred Stock and \$0.2273 per share plus any accrued dividends for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(vii) "*Merger or Consolidation*" shall mean the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such transaction or series of transactions.

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

(ix) "*Original Issue Date*" shall mean for the Series A Preferred Stock, the date upon which the first share of Series A Preferred Stock was issued, and for the Series B Preferred Stock, the date upon which the first share of Series B Preferred Stock is issued.

(x) "*Original Issue Price*" shall mean \$0.25 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) and \$0.15153 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(xi) "*Qualified Public Offering*" shall mean a firmly underwritten public offering of the Company pursuant to an effective registration statement filed under the Securities Act, covering the offer and sale of Common Stock for the account of the Company with a per share price not less than \$0.455 (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) and aggregate offering proceeds to the Company of not less than \$20,000,000.

(xii) "*Recapitalization*" shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(xiii) "*Securities Act*" shall mean the Securities Act of 1933, as amended.

3.2. *Dividends.*

(a) *Preferred Stock.* The holders of outstanding shares of Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors out of any assets at the time legally available therefor, at a rate equal to or greater than the Dividend Rate specified for such shares of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Company. Dividends on the Series B Preferred Stock shall be payable in preference to dividends on the Series A Preferred Stock and the Common Stock. No Distributions shall be made with respect to Series A Preferred Stock until all declared dividends on the Series B Preferred Stock, if any, have been paid to the holders of Series B Preferred Stock. No Distributions shall be made with respect to the Common Stock until all declared dividends on the Preferred Stock have been paid to the holders of each series of Preferred Stock. Payment of any dividends to the holders of a series of the Preferred Stock shall be on a *pro rata, pari passu* basis within such series, in accordance with the Dividend Rate for such series. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to such dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid in any calendar year. In the event that the Board of Directors declares dividends on the Series B Preferred Stock and such dividends are not paid within ten (10) days after declaration thereof, interest shall be payable on all such declared and unpaid dividends at the annual rate of interest equal to nine percent (9%), compounded annually, from the date of declaration until the date of payment.

(b) *Additional Dividends.* After the payment of the dividends as described in Section 3.2(a), any additional dividends (other than dividends payable solely in Common Stock) declared or paid in any fiscal year shall be declared or paid to the holders of the then outstanding Preferred Stock and Common Stock on a *pro rata* basis as if all shares of Preferred Stock were converted at the then-effective Conversion Rate (as defined in Section 3.4 hereof) into shares of Common Stock.

(c) *Non-Cash Distributions.* Except as otherwise provided herein, whenever a Distribution provided for in this Section 3.2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

3.3. *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary (a "*Liquidation Event*"), distributions to the stockholders of the Company shall be made in the following manner:

(a) *First Preference to Holders of Series B Preferred Stock.* The holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the Series A Preferred Stock or Common Stock by reason of their ownership of such stock, the Liquidation Preference specified for each share of Series B Preferred Stock then held by them and, in addition, an amount equal to any declared but unpaid dividends on the Series B Preferred Stock, plus any accrued but unpaid interest with respect to such declared but unpaid dividends.

If the assets and funds thus available for distribution among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of their full aforesaid preferential amount, then the entire amount of the assets and funds of the Company legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Series B Preferred Stock in proportion to the aggregate Liquidation Preference for the shares of such Series B Preferred Stock owned by each such holder.

(b) *Second Preference to Holders of Series A Preferred Stock.* After full payment of the liquidation preference payable to the holders of Series B Preferred Stock, the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the Common Stock by reason of their ownership of such stock, the Liquidation Preference specified for each share of Series A Preferred Stock then held by them and, in addition, an amount equal to all declared but unpaid dividends on the Series A Preferred Stock, plus any accrued but unpaid interest with respect to such declared but unpaid dividends.

If the assets and funds thus available for distribution among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of their full aforesaid preferential amount, then the entire amount of the assets and funds of the Company legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Series A Preferred Stock in proportion to the aggregate Liquidation Preference for the shares of such Series A Preferred Stock owned by each such holder.

(c) *Remaining Distributions.* After the payment to the holders of Series B Preferred Stock and Series A Preferred Stock of the full preferential amounts specified above, the entire remaining assets of the Company legally available for distribution by the Company shall be distributed with equal priority and *pro rata* among the holders of the Common Stock in proportion to the number of shares of Common Stock held by them.

(d) *Shares not Treated as Both Preferred Stock and Common Stock in any Distribution.* Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(e) *Reorganization.* For purposes of this Section 3.3, upon the agreement of the holders of a majority of the then outstanding shares of Series B Preferred Stock, either (i) a Merger or Consolidation, unless the stockholders of the Company immediately prior to any such transaction are holders of a majority of the voting power of the surviving company immediately thereafter; or (ii) a sale, lease or other conveyance of all or substantially all of the assets of the Company, shall be deemed to be a Liquidation Event.

(f) *Valuation of Non-Cash Consideration.* If any assets of the Company distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Company are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, *except that* any publicly traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Company shall be valued as follows:

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Company by another entity, the Distribution date shall be deemed to be the date such transaction closes.

3.4. *Conversion.* The holders of the Series A and Series B Preferred Stock shall have conversion rights as follows (the "*Conversion Rights*"):

(a) *Right to Convert.* Each share of Series A Preferred Stock or Series B 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 Company or any transfer agent for the Preferred Stock, into that number of fully paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series of Preferred Stock by the Conversion Price for such series of Preferred Stock. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "*Conversion Rate*" for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 3.4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) *Automatic Conversion.* Each share of Preferred Stock shall automatically be converted into fully paid, nonassessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of the Qualified Public Offering, or (ii) (A) with respect to Series B Preferred Stock, upon the receipt by the Company of a written consent of the holders of a majority of the then-outstanding shares of Series B Preferred Stock, voting separately, or if later, the effective date for conversion specified in such requests and (B) with respect to Series A Preferred Stock, upon the receipt by the Company of a

written consent of the holders of a majority of the then-outstanding shares of Series A Preferred Stock, voting separately, or if later, the effective date for conversion specified in such requests. Each of the events referred to in Section 3.4(b)(i) and (ii) are referred to herein as an "*Automatic Conversion Event*."

(c) *Mechanics of Conversion.* No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or of any transfer agent for the Preferred Stock, and shall give written notice to the Company at such office that such holder elects to convert the same; *provided, however*, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically, without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided further, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Company or its transfer agent as provided above, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Company, that notice from the Company shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

The Company shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid 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 unpaid Dividend Preference, *provided that* with respect to Series B Preferred Stock the holder may elect to convert such Dividend Preference into Common Stock in lieu of such cash payment. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; *provided, however*, that if the conversion is in connection with a Qualified Public Offering or a merger, sale or liquidation of the Company, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion

of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction.

(d) *Adjustments to Conversion Price for Diluting Issues.*

(i) *Special Definition.* For purposes of this Section 3.4(d), "*Additional Shares of Common*" shall mean all shares of Common Stock issued (or, pursuant to Section 3.4(d)(iii), deemed to be issued) by the Company after the Original Issue Date of the Series B Preferred Stock *other than*:

(1) shares of Common Stock issued or issuable upon conversion of shares of Preferred Stock;

(2) shares of Common Stock or options to purchase Common Stock issued or issuable to officers, employees, directors or consultants of the Company (or any subsidiary) pursuant to stock option grants approved by the Board of Directors of the Company under the Company's 2001 Stock Option Plan, or pursuant to other incentive plans or arrangements approved by the Board of Directors, up to an aggregate number of 9,305,506 shares of Common Stock of the Company; *provided, however*, that this aggregate number of shares of Common Stock that may be issued or issuable under this provision may be increased upon the written approval of the holders of two-thirds of the then outstanding Series B Preferred;

(3) shares of Common Stock issued upon the exercise, exchange, adjustment or conversion of Options or Convertible Securities outstanding as of the date of the filing of these Certificates;

(4) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to Sections 3.4(e), (f) or (g) hereof;

(5) shares of Common Stock issued in a Qualified Public Offering; and

(6) shares of Common Stock which the holders of a majority of the then outstanding Series B Preferred Stock, voting as a separate class, agree in writing shall not constitute Additional Shares of Common.

(ii) *No Adjustment of Conversion Price.* No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to Section 3.4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Company is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Preferred Stock.

(iii) *Deemed Issue of Additional Shares of Common.* In the event the Company at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities 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, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, *provided that* in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of the Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with 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 in the consideration payable to the Company, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price of the Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

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

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

a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of such exercised Options plus the consideration actually received by the Company upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange, and

b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Company for the

Additional Shares of Common deemed to have been then issued was the consideration actually received by the Company for the issue of such exercised Options, plus the consideration deemed to have been received by the Company (determined pursuant to Section 3.4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 3.4(d)(iii) as of the actual date of their issuance.

(iv) *Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.* In the event the Company shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 3.4(d)(iii)) for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the Preferred Stock shall be reduced in the following manner: (A) the Conversion Price for the Series A Preferred Stock will be reduced to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Company for the total number of Additional Shares of Common so issued would purchase at the Conversion Price then in effect, 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 so issued; and (B) the Conversion Price for the Series B Preferred Stock will be reduced to a price equal to the consideration per share received by the Company for such Additional Shares of Common so issued. For the purposes of this Section 3.4(d)(iv), all shares of Common Stock issuable upon exercise of outstanding Options or the conversion of outstanding Convertible Securities and shares of Preferred Stock, and all Additional Shares of Common deemed issued pursuant to Section 3.4(d)(iii) hereof, shall be deemed to be outstanding.

(v) *Determination of Consideration.* For purposes of this Section 3.4(d), the consideration received by the Company for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

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

a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Company excluding amounts paid or payable for accrued interest or dividends;

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

c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Company for consideration

which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) *Options and Convertible Securities.* The consideration per share received by the Company for Additional Shares of Common deemed to have been issued pursuant to Section 3.4(d)(iii) shall be determined by dividing

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

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

(c) *Adjustments for Subdivisions or Combinations of Common Stock.* In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) *Adjustments for Subdivisions or Combinations of Preferred Stock.* In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) *Adjustments for Reclassification, Exchange and Substitution.* Subject to Section 3.3 above (the "*Liquidation Rights*"), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other

than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders of Preferred Stock would otherwise have been entitled to receive upon conversion of their shares, each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which it would have been entitled to receive had it converted its Preferred Stock into Common Stock immediately prior to such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) *No Impairment.* The Company will not through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but will at all times in good faith assist in the carrying out of all the provisions of this Section 3.4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section 3.4(h) shall prohibit the Company from amending its Articles of Incorporation with the requisite consent of its stockholders and the board of directors.

(i) *Certificate as to Adjustments.* Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 3.4, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(j) *Waiver of Adjustment of Conversion Price.* Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of the majority of the outstanding shares of such series. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(k) *Reservation of Stock Issuable Upon Conversion.* The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then 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 Company 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.

3.5. *Voting.*

(a) *Restricted Class Voting.* 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.

(b) *No Series Voting.* Other than as provided herein or required by law, there shall be no series voting.

(c) *Preferred Stock.* Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders meeting in accordance with the Bylaws of the Company. Fractional votes shall not, however, be permitted and 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 disregarded.

(d) *Election of Directors.* Stockholders do not have the right to cumulate their votes for the election of directors and elections need not be by written ballot unless required by the Bylaws or applicable law. So long as 5,000,000 shares of Series B Preferred Stock remain outstanding: (i) the holders of the Series B Preferred Stock, voting together as a single class, shall be entitled to elect four (4) directors; and (ii) the holders of Series A Preferred Stock and Common Stock, voting together as a single class, shall be entitled to elect one (2) director. Any vacancies on the Board of Directors shall be filled by vote of the holders of that class or series of stock originally entitled to elect the director whose absence or resignation created such vacancy.

(e) *Adjustment in Authorized Common Stock.* The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of

to one vote for each share thereof held.

3.6. *Redemption.*

(a) At any time after five years from the initial closing date of the Series B Preferred Stock financing, and at the election of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, the Company shall redeem, out of funds legally available therefor, all (but not less than all) outstanding shares of Series B Preferred Stock which have not been converted into Common Stock pursuant to Section 3.4 hereof, in one lump sum payment, except as otherwise set forth herein (the "*Redemption Date*"); *provided, however*, that each minority holder of Series B Preferred may elect to irrevocably and forever waive its right to any redemption under this Section 3.6 in such stockholder's sole discretion. The Company shall redeem the applicable shares of Series B Preferred Stock by paying in cash an amount per share equal to the Original Issue Price for such Series B Preferred Stock, plus any declared but unpaid

dividends thereon (the "*Redemption Price*"). The Redemption Price shall be paid, at the election of the Company, either (i) in full on the Redemption Date, or (ii) in two (2) equal annual installments beginning on the Redemption Date, with interest accruing on the outstanding principal amount from the Redemption Date until full payment is made at eight percent (8%) per annum, which rate shall increase to fifteen percent (15%) per annum in the event of a default. The obligation of the Company to make such payments will be evidenced by a promissory note, which will provide for, among other things, acceleration of all amounts upon a failure to make any payments when scheduled, and for the payment of attorney's fees and costs incurred for the enforcement and collection of said promissory note.

(b) Any redemption effected pursuant to Section 3.6(a) shall be made on a *pro rata* basis among the applicable holders of the Series B Preferred in proportion to the shares of Series B Preferred then held by them.

(c) As soon as practicable following the Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series B Preferred Stock to be redeemed, at the address last shown on the records of the Company for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Company, in the manner and at the place designated, the holder's certificate or certificates representing the shares to be redeemed (the "*Redemption Notice*"). Except as provided herein, on or after the Redemption Date each holder of Series B Preferred Stock to be redeemed shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series B Preferred Stock designated for redemption in the Redemption Notice as holders of Series B Preferred Stock (except the right to receive the Redemption Price (plus interest if applicable hereunder) upon surrender of their certificate or certificates) shall cease with respect to the shares designated for redemption on such date, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. If the funds of the Company legally available for redemption of shares of Series B Preferred Stock on the Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Series B Preferred Stock. The shares of Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Company are legally available for the redemption of shares of Series B Preferred Stock, such funds will immediately be used to redeem the balance of the shares of the Series B Preferred Stock, which

the Company has become obliged to redeem on the Redemption Date, but which it has not redeemed.

(c) In the event that the Company fails to redeem the applicable Series B Preferred Stock in accordance with the terms set forth in Sections 3.6(a)-(d) for whatever reason, except that the Company is under a legal prohibition from so doing (in which case the Company shall redeem such shares of Series B Preferred Stock as soon as it shall legally be permitted to redeem as provided above), the applicable Redemption Price shall bear interest at the rate of fifteen percent (15%) per annum, compounded annually, from the date that such redemption obligation accrues until the date that such redemption is consummated.

3.7. General Preferred Stock Protective Provision. As long as any of the Series A Preferred Stock or Series B Preferred Stock shall remain outstanding, the Company shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of a majority of the total number of shares of the Series A Preferred Stock or Series B Preferred Stock then outstanding, as the case may be, alter or change the rights, preferences and privileges of the Series A Preferred Stock or Series B Preferred Stock, as the case may be, in a manner adverse to the holders thereof.

3.8. Series B Preferred Stock Protective Provisions. As long as at least 5,000,000 shares of Series B Preferred Stock shall remain outstanding, the Company shall not, without first obtaining the approval (by vote or written consent as provided by law) of the holders of a majority of the total number of Series B Preferred Stock then outstanding:

(a) amend, alter or repeal any provision of the Articles of Incorporation of the Company if such action would, directly or indirectly, adversely alter or affect the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Series B Preferred Stock;

(b) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Preferred Stock or any series thereof;

(c) authorize or create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges with respect to dividends or payments upon liquidation senior to or on a parity with the Series B Preferred Stock or having voting rights other than those granted to the Preferred Stock generally;

(d) enter into any transaction or series of related transactions deemed to be a Liquidation Event or effect a winding up, merger (including without limitation a merger into a subsidiary or parent), consolidation, other corporate reorganization, or any transaction in which all or substantially all of the assets of the Company are sold, leased or otherwise conveyed;

(e) increase the size of the board of directors to more than seven (7) directors;

(f) declare or pay any Distribution with respect to any shares of capital stock of the Company other than the Series B Preferred Stock;

(g) incur any indebtedness in excess of \$250,000; or

(h) guarantee any obligations or otherwise encumber the assets of the Company in an amount in excess of \$250,000.

ARTICLE IV

To the fullest extent permitted by the Delaware General Corporation Law, or any other applicable law, as the same exists or may hereafter be amended, a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for any action taken, or any failure to take any action, as a director.

Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim accruing or arising or that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE V

Except as provided in ARTICLE IV above, the Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.