

PATENT ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

ASSIGNMENT

CONVEYING PARTY DATA

Name	Execution Date
Robert W. Twitchell Jr.	08/07/2005

RECEIVING PARTY DATA

Name:	TERAHOP NETWORKS, INC.
Street Address:	1225 Old Alpharetta Road
Internal Address:	Suite 210
City:	Alpharetta
State/Country:	GEORGIA
Postal Code:	30005

PROPERTY NUMBERS Total: 38

Property Type	Number
Patent Number:	7538656
Patent Number:	7538657
Patent Number:	7538658
Patent Number:	7535339
Patent Number:	7940717
Patent Number:	7940736
Patent Number:	7830850
Patent Number:	7742744
Patent Number:	8050625
Patent Number:	7746838
Patent Number:	7940719
Patent Number:	7830852
Patent Number:	7941095
Patent Number:	7742745

OP \$1520.00 7538656

501726373

PATENT
REEL: 027238 FRAME: 0570

Application Number:	12349700
Application Number:	11930761
Application Number:	11930777
Application Number:	11930788
Application Number:	12349719
Application Number:	12349863
Application Number:	12370558
Application Number:	12411205
Application Number:	12471348
Application Number:	12496623
Application Number:	12553062
Application Number:	12556538
Application Number:	12684827
Application Number:	12694856
Application Number:	12703564
Application Number:	12703573
Application Number:	12768065
Application Number:	12772818
Application Number:	12774575
Application Number:	12783114
Application Number:	12813996
Application Number:	12821745
Application Number:	12882574
Application Number:	12938934

CORRESPONDENCE DATA

Fax Number: (877)248-5100

Phone: 8772485100

Email: uspto@ti-law.com

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.

Correspondent Name: Tillman Wright

Address Line 1: PO Box 49309

Address Line 4: Charlotte, NORTH CAROLINA 28277

ATTORNEY DOCKET NUMBER:

THN 0910 GROUP

NAME OF SUBMITTER:

Jeremy C. Doerre

PATENT
REEL: 027238 FRAME: 0571

source=016368-0910#page1.tif
source=016368-0910#page2.tif
source=016368-0910#page3.tif
source=016368-0910#page4.tif
source=017586-0120#page1.tif
source=017586-0120#page2.tif
source=017586-0120#page3.tif
source=017586-0120#page4.tif
source=017586-0120#page5.tif
source=017586-0120#page6.tif
source=017586-0120#page7.tif
source=017586-0120#page8.tif
source=017586-0120#page9.tif
source=017586-0120#page10.tif
source=017586-0120#page11.tif
source=017586-0120#page12.tif
source=017586-0120#page13.tif
source=017586-0120#page14.tif
source=017586-0120#page15.tif
source=017586-0120#page16.tif
source=017586-0120#page17.tif
source=017586-0120#page18.tif
source=017586-0120#page19.tif
source=017586-0120#page20.tif
source=017586-0120#page21.tif
source=017586-0120#page22.tif
source=017586-0120#page23.tif
source=017586-0120#page24.tif
source=017586-0120#page25.tif
source=017586-0120#page26.tif
source=017586-0120#page27.tif
source=017586-0120#page28.tif
source=017586-0120#page29.tif

QUITCLAIM/ASSIGNMENT OF INVENTION RIGHTS

WHEREAS,

Robert W. TWITCHELL, Jr.
122 Riverview Drive
Suwanee, GA 30024

(hereinafter "Assignor") has or may have invented certain new and useful improvements and/or designs (hereinafter "Invention"), for a full description of which reference is here made to a patent application titled:

**PROPAGATING *AD HOC* WIRELESS NETWORKS BASED ON COMMON
DESIGNATION AND ROUTINE**

(hereinafter "Application") filed or to be filed with the U.S. Patent & Trademark Office, European Patent Office, WIPO, or other governmental body, and for which Assignor hereby authorizes and requests Assignee to complete the following blanks specifying the serial number and filing date for said application identified above (but Assignee's failure to do so shall have no bearing whatsoever upon the validity or legal effect of this Assignment):

Serial Number: _____ Filed on: _____; and

WHEREAS,

SEEKERNET INCORPORATED
300 Satellite Boulevard
Suwanee, GA 30024

(hereinafter "Assignee") is desirous of acquiring the entire right, title and interest in, to, and under the Invention and the Application, and in, to, and under any and all patents that may be obtained for the Invention, together with all rights corresponding thereto;

NOW, THEREFORE, to all whom it may concern, be it known that, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor has agreed to quitclaim, sell, assign, transfer and convey, and by these presents does hereby quitclaim, sell, assign, transfer and convey, unto Assignee any and all right, title, and interest in, to and under:

- ❑ The Invention and the Application;
 - ❑ Any and all other applications for patent for the Invention that may be filed in any and all countries;
 - ❑ Any and all patents that may be obtained for the Invention in any and all countries;
 - ❑ Any reissue, extension, renewal, substitution, conversion, confirmation, division, continuation, continuation-in-part and the like of any of the foregoing; and
 - ❑ Any past or present right or cause of action arising there under, including the right to sue for patent infringement;
- (hereinafter collectively "Invention Rights").

FURTHERMORE,

Assignor hereby covenants and agrees, and binds any and all heirs, administrators, legal representatives, nominees, and assigns, to assist and cooperate with Assignee in the preparation and prosecution of any application included within the Invention Rights and in the prosecution or defense of any interference, opposition, or other proceeding that may arise in connection with any application or patent included within the Invention Rights and, further, to execute and deliver to Assignee any and all additional petitions, oaths, assignments, or other papers or instruments that may be requested by Assignee for the purpose of implementing this Agreement.

Assignor hereby authorizes and empowers Assignee to invoke and claim for any application or patent included within the Invention Rights the benefit of any rights to which Assignor might be entitled under international law or under the laws of any particular country, and to invoke and claim such rights without further written or oral authorization from Assignor.

Assignor hereby consents and agrees that a copy of this Assignment shall be deemed a full legal and formal equivalent of any assignment, consent to file, or like document that may be required in any particular country for any purpose and, more particularly, in proof of the right of Assignee to claim the aforesaid benefit of the right of priority.

Assignor covenants and agrees that this Assignment and all the terms thereof shall inure to the benefit of the successors, assigns, legal representatives, or nominees of Assignee, without further written or oral authorization from Assignor.

Finally, Assignor hereby authorizes and requests the Commissioner of Patents of the United States Patent and Trademark Office to issue any patent included within the Inventions Rights to Assignee.

[Signature Pages Follow]

This the 7 day of August, 2005.



Robert W. Twitchell, Jr.

NOTARIZATION

State of Georgia

County of _____

United States of America

On this _____ day of _____,
personally appeared **Robert W. Twitchell, Jr.**, before me, to me known and known to
me to be the person described as Assignor in and who executed the foregoing
instrument and acknowledged the same to be his/her free act and deed in and for the
purposes set forth above.

Notary Public

My Commission Expires: _____

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 "SEEKERNET INCORPORATED", CHANGING ITS NAME FROM "SEEKERNET INCORPORATED" TO "TERAHOP NETWORKS, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF APRIL, A.D. 2006, AT 11:10 O'CLOCK A.M.

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



3465527 8100

060358060

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4674164

DATE: 04-18-06

PATENT
REEL: 027238 FRAME: 0577

THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SEEKERNET INCORPORATED

SEEKERNET INCORPORATED, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation") DOES HEREBY CERTIFY:

FIRST: The original Certificate of Incorporation of SEEKERNET INCORPORATED was filed with the Secretary of State of Delaware on December 6, 2001 under the original name of "InfiNet Incorporated" and the Second Amended and Restated Certificate of Incorporation of the Corporation was filed on July 28, 2003 in accordance with the General Corporation Law of the State of Delaware ("DGCL").

SECOND: The Third Amended and Restated Certificate of Incorporation of SEEKERNET INCORPORATED in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 245 and 242 of the DGCL by the directors and stockholders of the Corporation.

THIRD: The Third Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto, is hereby incorporated herein by reference and restates, integrates and further amends the Certificate of Incorporation of the Corporation.

IN WITNESS WHEREOF, SEEKERNET INCORPORATED has caused this Third Amended and Restated Certificate of Incorporation to be signed by its President and the Secretary this 18th day of April, 2006.

SEEKERNET INCORPORATED

By /s/ Thomas Berger
Thomas Berger
President and Chief Executive Officer

ATTEST:

By /s/ William A. Carleton
William A. Carleton, Secretary

EXHIBIT A

THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
TERAHOP NETWORKS, INC.,
a Delaware corporation

ARTICLE I.

The name of this corporation is TERAHOP NETWORKS, INC (the "Corporation").

ARTICLE II.

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

ARTICLE III.

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

ARTICLE IV.

A. Classes of Stock. The Corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock, with \$0.001 par value per share (the "Preferred Stock") and Common Stock, with \$0.001 par value per share (the "Common Stock"). The total number of shares of capital stock that the Corporation is authorized to issue is Eighty-Eight Million (88,000,000). The total number of shares of Common Stock the Corporation shall have authority to issue is Forty-Eight Million (48,000,000). The total number of shares of Preferred Stock the Corporation shall have authority to issue is Forty Million (40,000,000), of which One Hundred Fifty Thousand (150,000) shares shall be designated Series A Convertible Preferred Stock (the "Series A Preferred Stock"), Two Hundred Forty Thousand (240,000) shares shall be designated Series A-1 Convertible Preferred Stock (the "Series A-1 Preferred Stock"), Four Million One Hundred Thirteen Thousand Seven Hundred Seventy (4,113,770) shall be designated Series B Convertible Preferred Stock (the "Series B Preferred Stock") and Thirty-Three Million Three Hundred Eighty-Three Thousand (33,496,230) shall be designated Series C Convertible Preferred Stock (the "Series C Preferred Stock"). The Series A Preferred Stock, Series A-1 Preferred Stock, and the Series B Preferred Stock are collectively referred to herein as the "Preferred Stock".

B. The Preferred Stock. The powers, preferences, rights, restrictions, and other matters relating to the Preferred Stock are as follows:

1. Dividends.

a. The holders of the Preferred Stock shall be entitled to receive dividends at the rate of (i) \$0.08 per share for the Series A Preferred Stock, (ii) \$0.25 per share for the Series A-1 Preferred Stock and \$0.25 per share for the Series B Preferred Stock (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum payable out of funds legally available therefor prior and in preference to any declaration or payment of any dividend on the Common Stock (other than those payable solely in the Common Stock). Payment of any dividends to the holders of the Preferred Stock shall be on a pro rata, pari passu basis in proportion to the foregoing dividend rates for each such series of Preferred Stock. Such dividends shall be payable only when, as and if declared by the Board of Directors (the "Board") and shall be non-cumulative.

b. If the Corporation shall declare a dividend or other distribution with respect to shares of Common Stock (other than dividends payable solely in Common Stock), then, in each such case the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

c. Notwithstanding anything to the contrary in this Section B.1, whether or not all declared dividends on the Preferred Stock shall have been paid or funds have been set aside therefore, the Corporation may at any time, out of funds legally available therefor, (i) repurchase shares of Common Stock of the Corporation issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements approved by the Board of Directors providing for the right of said repurchase, (ii) repurchase shares of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements approved by the Board of Directors providing for such rights, and (iii) repurchase shares of Common Stock or Preferred Stock of the Corporation upon the approval of the holders of a majority of the then-outstanding shares of Preferred Stock, voting together as a single class on an as converted basis.

2. Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary and including the transactions described in Section B.2.e below (a "Liquidation"), the assets and surplus funds of the Corporation available for distribution to the stockholders shall be distributed as follows:

a. First, 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 Corporation to the holders of the Series A-1 Preferred Stock, Series A Preferred Stock or the Common Stock by reason of their ownership thereof, the amount of \$3.125 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued or declared but unpaid dividends on such share for each share of Series B Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the

holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

b. Then, if any assets or surplus funds remain, the holders of the Series A-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Series A Preferred Stock or the Common Stock by reason of their ownership thereof, the amount of \$3.125 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued or declared but unpaid dividends on such share for each share of Series A-1 Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

c. Then, if any assets or surplus funds remain, the holders of 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 Corporation to the holders of Common Stock by reason of their ownership thereof, the amount of \$1.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued or declared but unpaid dividends on such share for each share of Series A Preferred Stock then held by them. If the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the remaining assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

d. Upon the completion of the distributions required by subparagraphs (a), (b) and (c) of this Section B.2 and Section C.2.a, any remaining assets or surplus funds of the Corporation available for distribution shall be distributed among the holders of the Preferred Stock, the Series C Preferred Stock and the Common Stock, pro rata based on the number of shares held and determined as a fully converted basis.

e. For purposes of this Section B.2, a Liquidation shall include any single transaction or series of related transactions as follows: (a) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (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 Corporation 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), as a result of shares in the Corporation

held by such holders prior to such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions, (b) a sale, lease or other conveyance of all or substantially all of the assets of the Corporation; (c) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary; or (d) granting of an exclusive license to all or substantially all of the Corporation's technology and patent portfolio (other than isolated transactions in particular product areas or industry applications approved by the Board).

f. Whenever the distribution provided for in this Section B.2 shall be payable in other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board of Directors. Notwithstanding the above, any securities shall be valued as follows:

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

(1) If traded on a national securities exchange or through Nasdaq-NMS, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

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

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Corporation's Board of Directors.

3. Redemption. The Preferred Stock shall not be redeemable.

4. Voting Rights.

a. Each holder of shares of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could then be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. 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 Series B

Preferred Stock, Series A-1 Preferred Stock and Series A Preferred Stock held by each holder could be convened) shall be rounded to the nearest whole number (with one-half being rounded upward).

b. At each annual meeting or other election of the Board of Directors of the Corporation, (i) the holders of the then outstanding shares of Series B Preferred Stock, voting together as a single class, shall be entitled to elect one (1) director of the Corporation, and (ii) the holders of the then outstanding shares of Common Stock and Preferred Stock, voting together as a single class on an as converted basis, shall be entitled to elect any remaining directors of the Corporation. Any vacancy occurring on the Board of Directors because of the death, resignation or removal of a director elected by the holders of any class or series of shares shall be filled by the vote or written consent of the holders of the then outstanding shares of such class or series. Except as otherwise provided above, any vacancy on the Board of Directors, including a vacancy resulting from an increase in the number of directors, shall be filled by the Board of Directors in accordance with the Bylaws.

c. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the Common Stock and Preferred Stock of the Corporation, voting together as a single class on an as converted basis.

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

a. Right to Convert. Subject to Section B.5.b(A) below, each share of Series B Preferred Stock, Series A-1 Preferred Stock and Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) in the case of the Series A Preferred Stock, \$1.00 by the Series A Conversion Price in effect at the time of conversion, (ii) in the case of the Series A-1 Preferred Stock, \$3.125 by the Series A-1 Conversion Price in effect at the time of conversion or (iii) in the case of the Series B Preferred Stock \$3.125 by the Series B Conversion Price in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Preferred Stock shall initially be (i) in the case of the Series A Preferred Stock, \$1.00 per share of Common Stock (the "Series A Conversion Price"), (ii) in the case of the Series A-1 Preferred Stock, \$3.125 per share of Common Stock (the "Series A-1 Conversion Price") and (iii) in the case of Series B Preferred Stock, \$3.125 per share of Common Stock (the "Series B Conversion Price"). Such initial Series A Conversion Price, Series A-1 Conversion Price and Series B Conversion Price shall be subject to adjustment as hereinafter provided.

b. Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price upon the earlier of (i) the date specified by written consent or agreement of holders of at least a majority of the shares of Preferred Stock then outstanding voting together as a single class on an as converted basis, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered

under the Securities Act of 1933, as amended (the "Securities Act"), in which the net proceeds to the Corporation equal not less than \$45,000,000 (a "Qualified Initial Public Offering").

b(A). Special Mandatory Conversion into Series C Preferred Stock.

Notwithstanding anything else herein to the contrary, each share of Preferred Stock, at any one time and not from time to time, shall automatically be converted into shares of Series C Preferred Stock at the "Special Conversion Rate" (defined below) upon a date specified, which must be on or before May 1, 2006, by the written consent or affirmative vote of the holders of at least a majority of each of the issued and outstanding Series A Preferred Stock, Series A-1 Preferred Stock and Series B Preferred Stock, each consenting or voting as a separate class (such conversion being referred to as a "Special Mandatory Conversion"). Notice ("Notice") of the Special Mandatory Conversion shall be given by the persons making the demand for the conversion to the Corporation. The Corporation shall promptly provide a copy of the Notice to each recordholder of the Preferred Stock. The conversion of the Preferred Stock into Series C Preferred Stock shall be as to all, but not less than all, of the Preferred Stock and shall be effective immediately upon the filing of the Notice with the Corporation. For purposes hereof, the term "Special Conversion Rate" shall mean: (A) as to the Series A Preferred Stock, 1.15597 per share of Series C Preferred Stock for each share of Series A Preferred Stock; (B) as to the Series A-1 Preferred Stock, 3.61241 per share of Series C Preferred Stock for each share of Series A Preferred Stock; and (C) (i) as to the Series B Preferred Stock issued on June 16, 2003, 3.47022 per share of Series C Preferred Stock for each share of Series B Preferred Stock on or before April 20, 2006; (ii) as to the Series B Preferred Stock issued on December 15, 2004, 3.00488 per share of Series C Preferred Stock for each share of Series B Preferred Stock converted on or before April 20, 2006; (iii) as to the Series B Preferred Stock issued on February 7, 2005, 2.94025 per share of Series C Preferred Stock for each share of Series B Preferred Stock converted on or before April 20, 2006; (iv) as to the Series B Preferred Stock issued on April 30, 2005, 2.88854 per share of Series C Preferred Stock for each share of Series B Preferred Stock converted on or before April 20, 2006; and (v) as to the Series B Preferred Stock issued on April 10, 2006, 2.60417 per share of Series C Preferred Stock for each share of Series B Preferred Stock converted on or before April 20, 2006; and .66667 per share of Series C Preferred Stock for each share of Series B Preferred Stock converted after April 20, 2006. Fractional shares will not be issued and the number of shares to be issued will be rounded up to the nearest whole (after calculating the full number of shares of Series C Preferred Stock to be issued to the holder). If the mandatory conversion contained herein is not exercised on or before May 1, 2006 then this Section b(A) shall lapse and the Series C Preferred Stock shall cease to be authorized.

c. Mechanics of Conversion.

(i) Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section B.5.a hereof, such holder shall either (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock or (2) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes

the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, 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. Except as otherwise provided herein, such conversion shall be deemed to have been made immediately prior to the close of business on the date of 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. Upon the occurrence of either of the events specified in Section B.5.b above, 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 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 either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executed an agreement satisfactory to the Corporation to indemnify the Corporation against any loss incurred by it in connection with such certificates.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

d. Adjustments to Conversion Price for Certain Dilutive Issuances.

(i) Special Definitions. For purposes of this Section B.5.d, the following definitions apply:

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

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

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock, or any obligation, any share of stock or other security of the Corporation convertible into or exchangeable for Common Stock issued (or, pursuant to Section B.5.d.(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than:

A. shares of Common Stock issued upon exercise or conversion of Options or Convertible Securities, outstanding as of the Original Issue Date;

B. shares of Common Stock issued or issuable upon exercise of any warrants issued after the Original Issue Date in connection with any subordinated, or other debt financing of the Corporation;

C. shares of Common Stock issued or issuable to officers, directors or employees of, or consultants to, the Corporation or a subsidiary or parent pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors, including without limitation shares of Common Stock issued or issuable upon exercise of any options outstanding on the Original Issue Date;

D. shares of Common Stock issued or issuable to strategic partners, vendors, customers, lenders or lessors pursuant to agreements approved by the Board of Directors of the Corporation;

E. shares of Common Stock issued or issuable pursuant to the acquisition of all or part of another company by the Corporation by merger or other reorganization, or by the purchase of all or part of the assets of another company, pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;

F. shares for which an adjustment is made pursuant to Section B.5.e, B.5.f and B.5.g; or

G. up to 2,468,262 shares (as adjusted for stock splits and the like) of Common Stock issued or issuable upon exercise of warrants to purchase Series B Preferred Stock.

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Series B Conversion Price, Series A-1 Conversion Price or Series A Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section B.5.d(v) hereof) for an Additional Shares of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for such series in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation 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 then 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 providing for a subsequent adjustment of such number) of Common stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefore, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue, or in case such a record date shall have been fixed, as of the close of business on such

record date, provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) except as provided in paragraphs (2) and (3) below, no further adjustments in the Series B Conversion Price, Series A-1 Conversion Price or Series A Conversion Price, as applicable, shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (including an increase or decrease resulting from any antidilution provision of such Options or Convertible Securities), the Series B Conversion Price, Series A-1 Conversion Price or Series A Conversion Price, as applicable, 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 (provided, however, that no such adjustment of the Series B Conversion Price, Series A Conversion Price or Series A-1 Conversion Price, as applicable, shall effect Common Stock previously issued upon conversion of such series of Preferred Stock);

(3) upon the expiration of any such Options or any rights to convert or exchange such Convertible Securities which have not been exercised, the Series B Conversion Price, Series A-1 Conversion Price or Series A Conversion Price, as applicable, to the extent in any way affected by or 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 Stock 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 Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation 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 Corporation 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 Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised.

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Series B Conversion Price, Series A-1 Conversion Price or

Series A Conversion Price, as applicable, to an amount that exceeds the lower of (a) the Conversion Price for such series on the original adjustment date, or (b) the Conversion Price for such series that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(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 Series B Conversion Price, Series A-1 Conversion Price or Series A Conversion Price, as applicable, which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter such Conversion Price shall be adjusted pursuant to this paragraph B.5.d.(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. If the Corporation, at any time after the Original Issue Date, shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section B.5.d.(iii)) without consideration or for a consideration per share less than the applicable Series A Conversion Price, Series A-1 Conversion Price or Series B Conversion Price, as the case may be, in effect on the date of and immediately prior to such issue, then, and in such event, the applicable Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the applicable Conversion Price for such series of Preferred Stock 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 of Common Stock that the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the applicable Conversion Price for such series of Preferred Stock in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated as if all shares of Preferred Stock had been fully converted into shares of Common Stock, and shall also include the conversion or exercise of any outstanding Options or other rights for the purchase of shares of stock or Convertible Securities as of such date, excluding such shares of Preferred Stock previously included in such calculation in accordance with this section.

(v) Determination of Consideration. For purposes of this Section B.5.d., the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable by the Corporation for accrued interest or accrued dividends that are not converted into shares of the Additional Common Stock;

(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; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section B.5.d.(iii), relating to Options and Convertible Securities shall be determined by dividing:

(A) the total amount, if any, received or receivable by the Corporation 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 providing for a subsequent adjustment of such number) payable to the Corporation 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 providing for a subsequent adjustment of such number) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

e. Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. If the Corporation, at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or if the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for any series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

f. Other Distributions. In case the Corporation makes a distribution to holders of its Common Stock payable in securities of the Corporation (other than shares of

Common Stock and other than as otherwise subject to adjustment pursuant to Section B.5.d or otherwise provided in Section B.5.b(A), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section b.5.d.(iii), or shall fix a record date for determination of holders of Common Stock entitled to receive such a distribution, then, in each such case, provision shall be made so that the holders of Preferred Stock shall be entitled to receive, upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of such distribution of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or on the record date with respect thereof, if such record date is fixed) and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such distribution receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under Section B.5.d with respect to the rights of the holders of Preferred Stock.

g. Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series B Preferred Stock, Series A-1 Preferred Stock or Series A 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 in Section B.5.e above or a merger or other reorganization referred to in Section B.2.e above), the applicable Conversion Price for such series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that such series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock that the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such series of Preferred Stock immediately before that change.

h. 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.

i. No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, 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 Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section B.5 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 the Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section B.5.i shall prohibit the Corporation from amending its Certificate of Incorporation with the requisite consent of its stockholders and board of directors.

j. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price for a series of Preferred Stock pursuant to this Section B.5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred Stock, Series A-1 Preferred Stock or Series A Preferred Stock, as applicable, a certificate executed by the Corporation's President or a Vice President setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of 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 for such series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such series of Preferred Stock.

k. Notices of Record Date. If the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other Corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock: (1) at least twenty (20) days prior written notice of the material terms of the transaction and the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and (2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event). If any material change in the facts set forth in the written notice shall occur, the Corporation shall promptly give written notice of such material change to the holders of Preferred Stock. 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 on an as converted basis.

l. 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 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 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 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, including,

without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

m. Fractional Shares. No fractional share shall be issued upon the conversion of any share of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

n. Notices. Any notice required by the provisions of this Section B.5 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

6. Restrictions and Limitations. The Corporation shall not, without the vote or written consent by the holders of at least a majority of the then outstanding shares of the Preferred Stock, voting together as a single class on an as converted basis, authorize, create or issue, or obligate itself to issue (by reclassification, merger or otherwise), any other equity security (including any security convertible into or exercisable for any equity security) having rights, preferences or privileges senior to the Preferred Stock with respect to liquidation preferences, redemption or dividends.

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

C. The Series C Preferred Stock. The powers, preferences, rights, restrictions, and other matters relating to the Series C Preferred Stock are as follows:

1. Dividends.

a. The holders of the Series C Preferred Stock shall be entitled to receive dividends at the rate of \$0.08 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum payable out of funds legally available therefor prior and in preference to any declaration or payment of any dividend on the Common Stock (other than those payable solely in the Common Stock) and upon any other class or series of stock ranking junior to the Series C Preferred Stock as to dividends and liquidation (collectively "Junior Stock"). Such dividends shall be payable only when, as and if declared by the Board of Directors (the "Board") and shall be non-cumulative. Declared but unpaid dividends provided for in this Section C.1.a shall not be paid upon conversion and shall instead be converted into Common Stock.

b. If the Corporation shall declare a dividend or other distribution with respect to shares of Common Stock (other than dividends payable solely in Common Stock), then, in each such case the holders of the Series C Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Series C Preferred Stock were the holders of the number of shares of Common Stock of the Corporation into which their respective shares of Series C Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

c. Notwithstanding anything to the contrary in this Section C.1, whether or not all declared dividends on the Series C Preferred Stock shall have been paid or funds have been set aside therefor, the Corporation may at any time, out of funds legally available therefor, (i) repurchase shares of Common Stock of the Corporation issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements approved by the Board providing for the right of said repurchase, (ii) repurchase shares of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements approved by the Board providing for such rights, and (iii) repurchase shares of Common Stock or Series C Preferred Stock of the Corporation upon the approval of the holders of a majority of the then-outstanding shares of Series C Preferred Stock, voting together as a single class on an as converted basis ("Preferred Vote").

2. Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the assets and surplus funds of the Corporation available for distribution to the stockholders shall be distributed as follows:

a. First, the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Junior Stock, by reason of their ownership thereof, the amount of \$0.80586 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares), plus all accrued or declared but unpaid dividends on such share for each share of Series C Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

b. Upon the completion of the distributions required by subparagraphs (a) of this Section C.2, any remaining assets or surplus funds of the Corporation available for distribution shall be distributed among the holders of Series C Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by them or issuable upon the conversion of the Series C Preferred Stock then held by them relative to the

total number of shares of Common Stock outstanding (and Common Stock issuable upon the conversion of the Series C Preferred Stock).

c. For purposes of this Section C.2, unless otherwise consented to with a Preferred Vote, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by (and the term "Liquidation" shall include), (a) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (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 Corporation 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), as a result of shares in the Corporation held by such holders prior to such transaction, at least fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such transaction or series of transactions, (b) a sale, lease or other conveyance of all or substantially all of the assets of the Corporation; or (c) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

d. Whenever the distribution provided for in this Section C.2 shall be payable in other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Board. Notwithstanding the above, any securities shall be valued as follows:

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

(1) If traded on a national securities exchange or through Nasdaq-NMS, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

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

B. The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

3. Voting Rights.

a. Each holder of shares of the Series C Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series C Preferred Stock could then be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law, voting together with the Common Stock as a single class) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (aggregating all shares into which shares of Series C Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

b. At each annual meeting or other election of the Board, the holders of the then outstanding shares of Series C Preferred Stock, voting together as a single class, shall be entitled to elect up to three (3) directors of the Corporation, voting together as a single class on an as converted basis. Any vacancy occurring on the Board because of the death, resignation or removal of a director elected by the holders of any class or series of shares shall be filled by the vote or written consent of the holders of the then outstanding shares of such class or series. Except as otherwise provided above, any vacancy on the Board, including a vacancy resulting from an increase in the number of directors, shall be filled by the Board in accordance with the Bylaws.

c. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the Common Stock and Series C Preferred Stock of the Corporation, voting together as a single class on an as converted basis.

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

a. Right to Convert. Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.80586 by the Series C Conversion Price in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series C Preferred Stock shall initially be \$0.80586 per share of Common Stock (the "Series C Conversion Price" or "Conversion Price"). Such initial Series C Conversion Price shall be subject to adjustment as hereinafter provided.

b. Automatic Conversion. Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price upon the earlier of (i) the date specified by a Preferred Vote, or (ii) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act"), in which the net proceeds to the Corporation equal not less than \$45,000,000 (a "Qualified Initial Public Offering").

c. Mechanics of Conversion.

(i) Before any holder of Series C Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section C.4.a hereof, such holder shall either (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock or (2) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series C 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. Upon the occurrence of either of the events specified in Section C.4.b above, the outstanding shares of Series C 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 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 either the certificates evidencing such shares of Series C Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executed an agreement satisfactory to the Corporation to indemnify the Corporation against any loss incurred by it in connection with such certificates.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series C Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to the closing of such sale of securities.

d. Adjustments to Conversion Price for Certain Dilutive Issuances.

(i) Special Definitions. For purposes of this Section C.4.d, the following definitions apply:

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

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

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock, or any obligation, any share of stock or other security of the Corporation convertible into or exchangeable for Common Stock issued (or deemed to be issued) by the Corporation after the Original Issue Date, other than:

A. shares of Common Stock issued upon exercise or conversion of Options or Convertible Securities, outstanding as of the Original Issue Date;

B. shares of Common Stock issued or issuable upon exercise of any warrants issued after the Original Issue Date in connection with any subordinated, or other debt financing of the Corporation;

C. shares of Common Stock issued or issuable to officers, directors or employees of, or consultants to, the Corporation or a subsidiary or parent pursuant to stock option or stock purchase plans or agreements on terms approved by the Board, including without limitation shares of Common Stock issued or issuable upon exercise of any options outstanding on the Original Issue Date;

D. shares of Common Stock issued or issuable to strategic partners, vendors, customers, lenders or lessors pursuant to agreements approved by the Board of the Corporation;

E. shares of Common Stock issued or issuable pursuant to the acquisition of all or part of another company by the Corporation by merger or other reorganization, or by the purchase of all or part of the assets of another company, pursuant to a plan, agreement or arrangement approved by the Board; or

F. shares for which an adjustment is made pursuant to another subsection of this Section C.4.

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Series C Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Shares of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for such series in effect on the date of, and immediately prior to, such issue.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation 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 then 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 providing for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefore, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue, or in case such a record date shall have been fixed, as of the close of business on such record date, provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) except as provided in paragraphs (2) and (3) below, no further adjustments in the Series C Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (including an increase or decrease resulting from any antidilution provision of such Options or Convertible Securities), the Series C 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 any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease ~ (provided, however, that no such adjustment of the Series C Conversion Price shall effect Common Stock previously issued upon conversion of such series of Series C Preferred Stock);

(3) upon the expiration of any such Options or any rights to convert or exchange such Convertible Securities which have not been exercised, the Series C Conversion Price, to the extent in any way affected by or 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 Stock 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 Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation 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 Corporation 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 Corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the

consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised.

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Series C Conversion Price to an amount that exceeds the lower of (a) the Conversion Price for such series on the original adjustment date, or (b) the Conversion Price for such series that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(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 Series C Conversion Price, which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter such Conversion Price shall be adjusted as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. If the Corporation, at any time after the Original Issue Date, shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.4.d.(iii)) without consideration or for a consideration per share less than the applicable Series C Conversion Price, in effect on the date of and immediately prior to such issue, then, and in such event, the applicable Conversion Price for such series of Series C Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the applicable Conversion Price for such series of Series C Preferred Stock 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 of Common Stock that the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the applicable Conversion Price for such series of Series C Preferred Stock in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purpose of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated as if all shares of Series C Preferred Stock had been fully converted into shares of Common Stock, and shall also include the conversion or exercise of any outstanding Options or other rights for the purchase of shares of stock or Convertible Securities as of such date, excluding such shares of Series C Preferred Stock previously included in such calculation in accordance with this section.

(v) Determination of Consideration. For purposes of this Section B.5.d., the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable by the Corporation for accrued interest or accrued dividends that are not converted into shares of the Additional Common Stock;

(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; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board.

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

(A) the total amount, if any, received or receivable by the Corporation 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 providing for a subsequent adjustment of such number) payable to the Corporation 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 providing for a subsequent adjustment of such number) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

e. Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. If the Corporation, at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or if the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price for any series of Series C Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

f. Other Distributions. In case the Corporation makes a distribution to holders of its Common Stock payable in securities of the Corporation (other than shares of

Common Stock and other than as otherwise subject to adjustment pursuant to Section C.4.d or otherwise provided herein), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section b.5.d.(iii), or shall fix a record date for determination of holders of Common Stock entitled to receive such a distribution, then, in each such case, provision shall be made so that the holders of Preferred Stock shall be entitled to receive, upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of such distribution of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or on the record date with respect thereof, if such record date is fixed) and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such distribution receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under Section C.4.d with respect to the rights of the holders of Preferred Stock.

g. Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series C 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 elsewhere in Section C.4. or a merger or other reorganization referred to in Section C.2.e above), the applicable Conversion Price for such series of Series C Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that such series of Series C Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock that the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such series of Series C Preferred Stock immediately before that change.

h. Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Series C 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.

i. No Impairment. The Corporation not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, 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 Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section C.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 the Series C Preferred Stock against impairment. Notwithstanding the foregoing, nothing in this Section C.4 shall prohibit the Corporation from amending its Certificate of Incorporation with the requisite consent of its stockholders and board of directors.

j. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Applicable Conversion Price, the Corporation at its expense

shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series C Preferred Stock, a certificate executed by the Corporation's President or a Vice President setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series C 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 for the Series C Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such Series C Preferred Stock.

k. Notices of Record Date. If the Corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock: (1) at least twenty (20) days prior written notice of the material terms of the transaction and the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and (2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event). If any material change in the facts set forth in the written notice shall occur, the Corporation shall promptly give written notice of such material change to the holders of Series C Preferred Stock. The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively with a Preferred Vote.

l. 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 Series C 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 Series C 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 Series C 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, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate.

m. Fractional Shares. No fractional share shall be issued upon the conversion of any share of Series C Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series C Preferred Stock

by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board).

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

5. Restrictions and Limitations. At any time when shares of Series C Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation of the Corporation, and in addition to any other vote required by law or the Certificate of Incorporation of the Corporation, without a Preferred Vote, the Corporation will not:

(1) Engage in or effect any transaction deemed a Liquidation under Section C.4, or any other liquidation or dissolution transaction or winding up of the affairs of the Corporation;

(2) Amend, alter or repeal any provision of its Certificate of Incorporation or By-laws, whether such amendment, alteration or repeal shall be accomplished by means of a merger, consolidation or otherwise;

(3) Authorize or issue any additional shares of any class or series of stock, or authorize the creation of any additional class or series of shares of stock;

(4) Purchase or redeem, or set aside any sums for the purchase or redemption of, or pay any dividend or make any distribution on, any shares of stock, except for purchases from an employee or consultant at cost upon termination of service;

(5) Create, or authorize the creation of, or issue, or authorize the issuance of, any debt security of the Corporation in excess of \$1,000,000, including without limitation, any debt security which by its terms is convertible into or exchangeable for any equity security of the Corporation and any security of the Corporation which is a combination of debt and equity;

(6) Increase the size of the Board to more than five (5) members; or

(7) Declare any dividend or distribution with respect to the Corporation's capital stock or set aside any amount with respect thereto.

6. No Reissuance of Series C Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall

be reissued, and all such shares shall be cancelled, retired and eliminated from the shares that the Corporation shall be authorized to issue.

D. The Common Stock.

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

2. Liquidation Rights. Upon the Liquidation of the Corporation, the assets of the Corporation shall be distributed as provided in Section C.2 of this Article IV.

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

ARTICLE V.

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law of the State of Delaware is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware as so amended.

Any repeal or modification of the foregoing provisions of this Article V by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions occurring prior to, such repeal or modification.

ARTICLE VI.

The Corporation 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 on stockholders herein are granted subject to this reservation.

ARTICLE VII.

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

ARTICLE VIII.

Except as otherwise provided in this Certificate of Incorporation, the number of directors which shall constitute the whole Board of Directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws of the Corporation or in an amendment thereof duly adopted by the Board of Directors of the Corporation or by the stockholders of the Corporation.

ARTICLE IX.

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

ARTICLE X.

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation; provided, however, that the grant of such power to the Board of Directors shall not divest the stockholders of nor limit their power to make, repeal, alter, amend and rescind any or all of the Bylaws.