

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
CONVEYING PARTY DATA	
Name	Execution Date
VIDEOEGG, INC.	01/12/2011
RECEIVING PARTY DATA	
Name:	SAY MEDIA, INC.
Street Address:	180 Townsend Street
Internal Address:	Third Floor
City:	San Francisco
State/Country:	CALIFORNIA
Postal Code:	94107
PROPERTY NUMBERS Total: 10	
Property Type	Number
Application Number:	11620779
Patent Number:	7809802
Patent Number:	7769819
Application Number:	11781830
Application Number:	12209126
Application Number:	12209138
Application Number:	12209107
Application Number:	12209062
Application Number:	12572109
Application Number:	12756934
CORRESPONDENCE DATA	
Fax Number:	(949)852-0004
Phone:	949.852.0000
Email:	pair@kppb.com

OP \$400.00 11620779

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

Correspondent Name: David J. Bailey
Address Line 1: 2400 E. Katella
Address Line 2: Suite 1050
Address Line 4: Anaheim, CALIFORNIA 92806

NAME OF SUBMITTER:

Trudi Thompson

Total Attachments: 29

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Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "VIDEOEGG, INC.", CHANGING ITS NAME FROM "VIDEOEGG, INC." TO "SAY MEDIA, INC.", FILED IN THIS OFFICE ON THE TWELFTH DAY OF JANUARY, A.D. 2011, AT 2:46 O'CLOCK P.M.


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

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110037135

You may verify this certificate online
at corp.delaware.gov/authver.shtml




AUTHENTICATION: 8490124

DATE: 01-12-11

PATENT
REEL: 028275 FRAME: 0850

EIGHTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VIDEOEGG, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

VideoEgg, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY THAT:

1. The name of this corporation is VideoEgg, Inc. (the "Corporation"). The Corporation was originally incorporated pursuant to the General Corporation Law on March 17, 2005 under the name VideoEgg, Inc. On April 20, 2005, the Corporation filed an Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware. On January 4, 2006, the Corporation filed a Second Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware. On September 26, 2006, the Corporation filed a Third Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware. On February 13, 2007, the Corporation filed a Fourth Amended and Restated Certificate of Incorporation. On August 20, 2007, the Corporation filed a Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation. On August 28, 2007, the Corporation filed a Fifth Amended and Restated Certificate of Incorporation. On February 26, 2008, the Corporation filed a Certificate of Amendment to the Fifth Amended and Restated Certificate of Incorporation. On January 28, 2009, the Corporation filed a Sixth Amended and Restated Certificate of Incorporation. On March 19, 2010, the Corporation filed a Seventh Amended and Restated Certificate of Incorporation.

2. This Eighth Amended and Restated Certificate of Incorporation (the "Certificate") amends and restates the Seventh Amended and Restated Certificate of Incorporation of the Corporation, as amended and was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law, and was approved by written consent of the stockholders of the Corporation given in accordance with the provisions of Section 228 of the General Corporation Law. The resolution setting forth the Eighth Amended and Restated Certificate of Incorporation of the Corporation is as follows:

RESOLVED, that the Seventh Amended and Restated Certificate of Incorporation of the Corporation, as amended, be, and it hereby is, amended and restated in its entirety to read as follows:

FIRST: The name of the corporation is Say Media, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801. The name of its registered agent

at such address is Corporation Trust Company, in the City of Wilmington, County of New Castle.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 160,738,285 shares, consisting of (i) 110,000,000 shares of Common Stock, \$0.000125 par value per share ("Common Stock"), and (ii) 50,738,285 shares of Preferred Stock, \$0.000125 par value per share ("Preferred Stock"), of which (A) 3,000,000 shares shall be designated "Series A Convertible Preferred Stock" (hereinafter, "Series A Preferred Stock"), (B) 8,768,248 shares shall be designated "Series B Convertible Preferred Stock" (hereinafter, "Series B Preferred Stock"), (C) 9,657,186 shares shall be designated "Series C Convertible Preferred Stock" (hereinafter, "Series C Preferred Stock"), (D) 5,776,919 shares shall be designated "Series D Convertible Preferred Stock" (hereinafter, "Series D Preferred Stock"), (E) 9,664,871 shares shall be designated "Series E Convertible Preferred Stock" (hereinafter, "Series E Preferred Stock"), (F) 4,961,061 shares shall be designated "Series F Convertible Preferred Stock" (hereinafter, "Series F Preferred Stock"), (G) 1,830,000 shares shall be designated "Series G-1 Convertible Preferred Stock" (hereinafter, "Series G-1 Preferred Stock"), (H) 1,140,000 shares shall be designated "Series G-2 Convertible Preferred Stock" (hereinafter, "Series G-2 Preferred Stock"), (I) 4,250,000 shares shall be designated "Series G-3 Convertible Preferred Stock" (hereinafter, "Series G-3 Preferred Stock") and (J) 1,690,000 shares shall be designated "Series G-4 Convertible Preferred Stock" (hereinafter, "Series G-4 Preferred Stock" and together with the Series G-1 Preferred Stock, Series G-2 Preferred Stock and Series G-3 Preferred stock, hereinafter "Series G Preferred Stock"). The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation. Unless otherwise indicated, references to "Sections" or "Subsections" in this Article refer to sections and subsections of this Article Fourth.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein and as may be designated by resolution of the Board of Directors with respect to any series of Preferred Stock as authorized herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. Any dividends, after payment of any of any preferential dividends to the Preferred Stock, shall be paid to the holders of shares of the Common Stock and Preferred Stock pro rata based on the number of shares of Common Stock then held by each holder (assuming conversion of all such Preferred Stock into Common Stock).

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of the Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

B. PREFERRED STOCK

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued, except as otherwise provided by law or by the terms of any series of Preferred Stock. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes, except as expressly provided herein or under the applicable law.

C. SERIES A, SERIES B, SERIES C, SERIES D, SERIES E, SERIES F, SERIES G-1, SERIES G-2, SERIES G-3 AND SERIES G-4 CONVERTIBLE PREFERRED STOCK

The 3,000,000 shares of Series A Preferred Stock, 8,768,248 shares of Series B Preferred Stock, 9,657,186 shares of Series C Preferred Stock, 5,776,919 shares of Series D Preferred Stock, 9,664,871 shares of Series E Preferred Stock, 4,961,061 shares of Series F Preferred Stock, 1,830,000 shares of Series G-1 Preferred Stock, 1,140,000 shares of Series G-2 Preferred Stock, 4,250,000 shares of Series G-3 Preferred Stock and 1,690,000 shares of Series G-4 Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

1. Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of Common Stock in any calendar year, other than dividends on shares of Common Stock payable in shares of Common Stock, unless (in addition to obtaining any consents required elsewhere in the Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive a dividend on each outstanding share of Preferred Stock in an amount equal to (a) \$0.01 per share, in the case of the Series A Preferred Stock, (b) \$0.033175 per share, in the case of the Series B Preferred Stock, (c) \$0.1313405 per share, in the case of the Series C Preferred Stock, (d) \$0.208 per share, in the case of Series D Preferred Stock, (e) \$0.083312 per share, in the case of Series E Preferred Stock, (f) \$0.1387 per share, in the case of Series F Preferred Stock, (g) \$0.1384 per share, in the case of Series G-1 Preferred Stock, (h) \$0.1384 per share, in the case of Series G-2 Preferred Stock, (i) \$0.1384 per share, in the case of Series G-3 Preferred Stock and (j) \$0.1384 per share, in the case of Series G-4 Preferred Stock in each case subject to appropriate adjustment in the event of any stock dividend, stock split,

combination or other similar recapitalization affecting such shares. The foregoing dividend shall be paid when, as and if declared by the Board of Directors of the Corporation and shall not be cumulative.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) Preferential Payment to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holder of each share of Preferred Stock then outstanding shall be entitled to be paid out of the assets available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of its ownership thereof, an amount per share equal to its respective Liquidation Amount. If upon any such liquidation, dissolution or winding up of the Corporation the assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full aforesaid preferential amounts, the holders of shares of Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the full preferential amount that each such holder is otherwise entitled to receive pursuant to this subsection (a). "Liquidation Amount" shall mean the Original Issue Price of a particular share of Preferred Stock, plus any dividends declared but unpaid thereon; "Original Issue Price" means the Series A Original Issue Price, the Series B Original Issue Price, the Series C Original Issue Price, the Series D Original Issue Price, the Series E Original Issue Price, the Series F Original Issue Price, the Series G-1 Original Issue Price, the Series G-2 Original Issue Price, the Series G-3 Original Issue Price or the Series G-4 Original Issue Price, as applicable; "Series A Original Issue Price" means an amount equal to \$0.125 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock; "Series B Original Issue Price" means an amount equal to \$0.414695865 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock; "Series C Original Issue Price" means an amount equal to \$1.64175625 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock; "Series D Original Issue Price" means an amount equal to \$2.60 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock; "Series E Original Issue Price" means an amount equal to \$1.0414 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Preferred Stock; "Series F Original Issue Price" means an amount equal to \$1.7335 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series F Preferred Stock; "Series G-1 Original Issue Price" means an amount equal to \$0.3459 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series G-1 Preferred Stock; "Series G-2 Original Issue Price" means an amount equal to \$2.420463 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series G-2 Preferred Stock; "Series G-3 Original Issue Price" means an amount equal to \$2.993576 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series G-3

Preferred Stock; and "Series G-4 Original Issue Price" means an amount equal to \$8.040962 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series G-4 Preferred Stock.

(b) Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock, the assets available for distribution to the Corporation's stockholders shall be distributed among the holders of Common Stock, pro rata based on the number of shares of Common Stock held by each such stockholder.

(c) Deemed Conversion. Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock immediately prior to such liquidation, dissolution or winding up if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock, taking into account this sentence with respect to all holders of Preferred Stock simultaneously. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(d) Deemed Liquidation Events.

(i) The following events shall be deemed to be a liquidation of the Corporation for purposes of this Section 2, unless the holders of at least a majority of the shares of Preferred Stock (calculated on an as-converted to Common Stock basis) elect otherwise by written notice (other than (x) a Series D Exceptional Liquidation Event, as defined in Section C.5(a)(i) below or (y) a Series C Exceptional Liquidation Event, as defined in Section C.5(a)(ii) below, in which case the election of the holders of at least a majority of the shares of Series D Preferred Stock or Series C Preferred Stock, as applicable, shall also be required) given to the Corporation at least five days prior to the effective date of any such event (any such event, unless such an election is made, is referred to herein as a "Deemed Liquidation Event"):

- (A) a merger or consolidation in which
 - (I) the Corporation is a constituent party or
 - (II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or

consolidation continue to represent, or are converted or exchanged for shares of capital stock which represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection C.2(d)(i), all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged;

(B) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation; or

(C) the closing of the transfer (whether by merger, combination, consolidation or otherwise), in one transaction or a series of related transactions, to a corporation, person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing, such corporation, person or group of affiliated persons would hold 50% or more of the outstanding voting stock of the Corporation (other than an equity financing in which the Corporation is the surviving corporation).

(ii) The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection C.2(d)(i)(A)(I) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections C.2(a), C.2(b) and C.2(c) above.

(iii) In the event of the consummation of a Deemed Liquidation Event pursuant to Subsection C.2(d)(i)(A)(II) or C.2(d)(i)(B) above, if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 45 days after such Deemed Liquidation Event, then the Corporation shall use the consideration received by the Corporation from such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation) (the "Net Proceeds"), to the extent legally available therefor, on the 60th day after the consummation of such Deemed Liquidation Event (the "Liquidation Redemption Date"), to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable Liquidation Amount with respect thereto. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption in full, the Corporation shall redeem a pro rata portion of each holder's shares of Preferred Stock to the fullest extent of such Net Proceeds or such lawfully available funds, as

the case may be, and, where such redemption is limited by the amount of lawfully available funds, the Corporation shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Subsections 6(b) through 6(e) below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this Subsection 2(d)(iii). Prior to the redemption provided for in this Subsection 2(d)(iii), the Corporation shall not expend or dissipate the consideration received from such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

(iv) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation, with the approval of holders of at least a majority of the then outstanding shares of Preferred Stock (calculated on an as-converted to Common Stock basis). In the event that the Company's Board of Directors and holders of at least a majority of the outstanding shares of Preferred Stock (calculated on an as-converted to Common Stock basis) are not able to agree on such value, the Corporation and such holders shall mutually appoint a reputable appraiser to determine such fair market value. If such parties are unable to mutually agree upon a reputable appraiser, each such party shall designate an appraiser, and such two appraisers shall designate a third appraiser, who shall be the sole appraiser and shall determine the value of such property, services or other non-cash consideration, as applicable, not less than thirty (30) days following such engagement.

3. Voting.

(a) On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Subsection 3(b) or 3(c) below, holders of Preferred Stock shall vote together with the holders of Common Stock, as a single class.

(b) The holders of record of the shares of Series B Preferred Stock, exclusively and voting or consenting, as the case may be, as a separate class, shall be entitled to elect one director of the Corporation (the "Series B Director"). The holders of record of the shares of Series C Preferred Stock, exclusively and voting or consenting, as the case may be, as a separate class, shall be entitled to elect one director of the Corporation (the "Series C Director," and together with the Series B Director, the "Preferred Stock Directors"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of a majority of the then outstanding shares of Series B Preferred Stock or Series C Preferred Stock, as applicable, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders.

The holders of record of the shares of Common Stock, Series A Preferred, Series D Preferred, Series E Preferred, Series F Preferred and Series G Preferred, exclusively and voting together as a single class on an as-converted basis, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3(b).

(c) As long as at least 4,000,000 shares of Preferred Stock remain outstanding (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), and in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock (calculated on an as-converted to Common Stock basis), given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, the Corporation shall not, either directly or by amendment, merger, consolidation, reclassification or otherwise:

(i) increase or decrease the authorized number of shares of Preferred Stock;

(ii) take any action which adversely alters or changes the rights, preferences or privileges of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock or Series G Preferred Stock;

(iii) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing;

(iv) create, or authorize the creation of, any additional class or series of shares of stock unless the same ranks junior to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends, voting rights and redemption rights;

(v) purchase or redeem or pay or declare any dividend, or make any distribution on, any shares of stock other than the Preferred Stock in the manner expressly authorized herein, or permit any subsidiary of the Corporation to take any such action, except for (A) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (B) securities repurchased from time to time from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service;

(vi) increase or decrease the authorized number of directors constituting the Board of Directors;

(vii) increase the number of shares of Common Stock issuable pursuant to the Company's stock option plans or adopt any new employee stock option or stock purchase plan, stock incentive plan or other similar stock plan without the approval of the Board of Directors;

(viii) lease, transfer, assign, sell or grant an exclusive license to use any material component of the intellectual property of the Corporation or its subsidiaries; or

(ix) cause the Corporation, together with any of its subsidiaries, to incur indebtedness (or guarantees of indebtedness) individually or in the aggregate in excess of \$2,000,000 (unless approved by the Board of Directors including the Preferred Stock Directors).

(d) As long as any shares of Series D Preferred Stock remain outstanding, and in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, the Corporation shall not, either directly or by amendment, merger, consolidation, reclassification or otherwise:

(i) amend, waive, modify or repeal the requirement set forth in Section C.2(d)(i) or Section C.5(a)(i) to obtain the election or consent of the holders of a majority of the Series D Preferred Stock in the circumstances referenced therein;

(ii) amend, waive, modify or repeal any provision of Section C.4(d)(iv) in a manner that would reduce or eliminate the adjustment to the Conversion Price of the Series D Preferred Stock in contemplation of or in connection with a Series D Exceptional Financing Event, as defined below, pursuant to Section C.5(a)(i) below; or

(iii) amend, waive, modify or repeal this Section C.3(d).

(e) As long as any shares of Series C Preferred Stock remain outstanding, and in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, the Corporation shall not, either directly or by amendment, merger, consolidation, reclassification or otherwise:

(i) amend, waive, modify or repeal the requirement set forth in Section C.2(d)(i) or Section C.5(a)(ii) to obtain the election or consent of the holders of a majority of the Series C Preferred Stock in the circumstances referenced therein;

(ii) amend, waive, modify or repeal any provision of Section C.4(d)(iv) in a manner that would reduce or eliminate the adjustment to the Conversion Price of the Series C Preferred Stock in contemplation of or in connection with a Series C Exceptional Financing Event, as defined below, pursuant to Section C.5(a)(ii) below; or

(iii) amend, waive, modify or repeal this Section C.3(e).

4. Optional Conversion.

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

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$0.125 (in the case of the Series A Preferred Stock), \$0.414695865 (in the case of the Series B Preferred Stock), \$1.64175625 (in the case of the Series C Preferred Stock), \$2.60 (in the case of the Series D Preferred Stock), \$1.0414 (in the case of the Series E Preferred Stock), \$1.7335 (in the case of the Series F Preferred Stock) and \$1.7335 (in the case of the Series G Preferred Stock) by the Conversion Price (as defined below) in effect at the time of conversion, in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares. The "Conversion Price" for the Series A Preferred Stock shall initially be \$0.125; the "Conversion Price" for the Series B Preferred Stock shall initially be \$0.414695865; the "Conversion Price" for the Series C Preferred Stock shall initially be \$1.53182907; the "Conversion Price" for the Series D Preferred Stock shall initially be \$2.3146; the "Conversion Price" for the Series E Preferred Stock shall initially be \$1.0414; the "Conversion Price" for the Series F Preferred Stock shall initially be \$1.7335; and the "Conversion Price" for the Series G Preferred Stock shall initially be \$1.7335, in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares. Such initial Conversion Prices, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(i) In the event of a Redemption Notice of any shares of Preferred Stock pursuant to Section 6 hereof, the Conversion Rights of all of the shares designated for redemption (the "Redeemable Shares") shall terminate at the close of business on the last full day preceding the initial Redemption Date (as such term is defined in Section 6), unless (i) the initial Installment (as such term is defined in Section 6) is not fully paid on the initial Redemption Date, in which case the Conversion Rights for all of the Redeemable Shares shall continue until such initial Installment is paid in full, and (ii) the second Installment is not fully paid on the second Redemption Date, in which case the Conversion Rights for all of the Redeemable Shares not yet redeemed shall continue until such second Installment is paid in full.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. Notwithstanding the foregoing, (i) if the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering 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 persons 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, and (ii) if the conversion occurs pursuant to subsection 5(a)(B) below, such conversion shall be deemed to have been made on the conversion date described in the stockholder consent approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such office to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain

the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price for a series of Preferred Stock below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of such class or series, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(iv) Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(v) The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4 and pursuant to Section 5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Certificate, the following definitions shall apply:

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

(B) "Original Issue Date" shall mean, with respect to a series of Preferred Stock, the date on which the first share of such series of Preferred Stock was first issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the applicable Original Issue Date for a series of Preferred Stock, other than the following (collectively, the "Exempted Securities"):

- (I) shares of Common Stock issued or deemed issued as a dividend or distribution on Preferred Stock;
- (II) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4(e) or 4(f) below;
- (III) shares of Common Stock (or Options with respect thereto) or restricted stock or similar awards issued or issuable to employees or directors of, or consultants or advisors to, the Corporation pursuant to a plan or arrangement approved by the Board of Directors of the Corporation, including at least one of the Preferred Stock Directors;
- (IV) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;
- (V) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including at least one of the Preferred Stock Directors;
- (VI) shares of Common Stock issued or deemed issued in connection with acquisition or merger transactions;
- (VII) shares of Common Stock issued in a public offering;
- (VIII) shares of Common Stock issued or issuable to a current or former employee of the Corporation in connection with a separation agreement approved or ratified by the Board of Directors, including at least one of the Preferred Stock Directors;

(IX) shares of Series F Preferred Stock or shares of Common Stock issued or issuable upon conversion of shares of Series F Preferred Stock; or

(X) shares of Series G Preferred Stock or shares of Common Stock issued or issuable upon conversion of shares of Series G Preferred Stock.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price for a series of Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the consideration per share (determined pursuant to Subsection 4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Conversion Price of such series in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(A) If the Corporation at any time or from time to time on or after the Original Issue Date with respect to a series of Preferred Stock shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, 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.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price of any series of Preferred Stock pursuant to the terms of Subsection 4(d)(iv) below, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price of the applicable series of Preferred Stock computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have been obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (B) shall have the effect of increasing the Conversion Price of any series of Preferred Stock to an amount which exceeds the lower of (i) the Conversion Price for such series of

Preferred Stock on the original adjustment date, or (ii) the Conversion Price for such series of Preferred Stock that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock relating to such Option or Convertible Security) between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price of any series of Preferred Stock pursuant to the terms of Subsection 4(d)(iv) below (either because the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect with respect to the applicable series of Preferred Stock, or because such Option or Convertible Security was issued before the applicable Original Issue Date), are revised after the applicable Original Issue Date (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4(d)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(D) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price of any series of Preferred Stock pursuant to the terms of Subsection 4(d)(iv) below, the Conversion Price of such series of Preferred Stock shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security never been issued.

(iv) Adjustment of the Conversion Prices Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time on or after the date this Certificate of Incorporation is filed with the Secretary of State of the State of Delaware issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Conversion Price for a series of Preferred Stock in effect immediately prior to such issue, then such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

(A) CP_2 shall mean the Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(B) CP_1 shall mean the Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(C) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock, provided, that (I) all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue) shall be deemed to be outstanding and (II) the number of shares of Common Stock deemed issuable upon conversion or exchange of such outstanding Convertible Securities shall not give effect to any adjustments to the conversion or exchange price or conversion or exchange rate of such Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject to this calculation;

(D) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(E) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

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

(A) Cash and Property: Such consideration shall:

- (I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation, including at least one of the Preferred Stock Directors; and
- (III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Corporation, including at least one of the Preferred Stock Directors.

(B) 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 Subsection 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

- (I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the 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
- (II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, 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.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price of any series of Preferred Stock pursuant to the terms of Subsection 4(d)(iv) above, and such issuance dates occur within a period of no more than 90 days from the first such issuance to the final such issuance, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date of the Series G Preferred Stock effect a subdivision of the outstanding Common Stock, the Conversion Price for each series of Preferred Stock then in effect immediately before that subdivision or combination shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date of the Series G Preferred Stock combine the outstanding shares of Common

Stock, the Conversion Price for each series of Preferred Stock then in effect immediately before the combination or subdivision shall be proportionately increased. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date with respect to a series of Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price for such series of Preferred Stock in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date with respect to a series of Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section (C)(1) do not apply to such dividend or distribution, then and in each such event the holders of such series of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding

shares of such series of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. If there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a Deemed Liquidation Event or a transaction covered by Subsections (e), (f) or (g) of this Section 4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Prices) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock so affected a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Prices then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

(j) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least 10 business days prior to the record date or effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed given to such holder if deposited in the United States mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

5. Mandatory Conversion.

(a) Upon the earlier of (A) the moment immediately prior to, but contingent upon, the closing of the sale of shares of Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$25,000,000 of proceeds, net of the underwriting discount and commissions, to the Corporation or (B) a date specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting or consenting, as the case may be, together as a single class and on an as-converted to Common Stock basis (the date of such closing or such vote or written consent is referred to herein as the "Mandatory Conversion Date"), all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price; provided, however, that:

(i) none of the outstanding shares of Series D Preferred Stock shall be converted pursuant to Section C.5(a) above (x) without the written consent of a majority of the holders of the then outstanding shares of Series D Preferred Stock in contemplation of or in connection with a Deemed Liquidation Event, if such conversion would result in (xx) an increase in the aggregate proceeds received by the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock relative to the aggregate proceeds such holders would otherwise receive if shares of Series D Preferred Stock were not so converted in such Deemed Liquidation Event, and (yy) a decrease in the aggregate proceeds received by the holders of Series D Preferred Stock as a result of such conversion when compared to the aggregate proceeds such holders of Series D Preferred Stock would otherwise receive in such Deemed Liquidation Event (a "Series D Exceptional Liquidation Event") or (y) in connection with the issuance (or deemed issuance) of Additional Shares of Common stock for a consideration per share (as determined in accordance with subsection 4(d)(v)) that is less than the applicable Conversion Price for the Series D Preferred Stock and greater than the applicable Conversion

Price for the Series C Preferred Stock, unless the Conversion Price for the Series D Preferred Stock is adjusted pursuant to Section 4(d)(iv) for such issuance before such conversion of Preferred Stock into Common Stock pursuant to this Section 5(a)(i) (a "Series D Exceptional Financing Event"); and

(ii) none of the outstanding shares of Series C Preferred Stock shall be converted pursuant to Section C.5(a) above (x) without the written consent of a majority of the holders of the then outstanding shares of Series C Preferred Stock in contemplation of or in connection with a Deemed Liquidation Event, if such conversion would result in (xx) an increase in the aggregate proceeds received by the holders of Series A Preferred Stock and Series B Preferred Stock relative to the aggregate proceeds such holders would otherwise receive if shares of Series C Preferred Stock were not so converted in such Deemed Liquidation Event, and (yy) a decrease in the aggregate proceeds received by the holders of Series C Preferred Stock as a result of such conversion when compared to the aggregate proceeds such holders of Series C Preferred Stock would otherwise receive in such Deemed Liquidation Event (a "Series C Exceptional Liquidation Event") or (y) in connection with the issuance (or deemed issuance) of Additional Shares of Common stock for a consideration per share (as determined in accordance with subsection 4(d)(v)) that is less than the applicable Conversion Price for the Series C Preferred Stock and greater than the applicable Conversion Price for the Series B Preferred Stock, unless the Conversion Price for the Series C Preferred Stock is adjusted pursuant to Section 4(d)(iv) for such issuance before such conversion of Preferred Stock into Common Stock pursuant to this Section 5(a)(ii) (a "Series C Exceptional Financing Event")

(b) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, or given by electronic communication in compliance with the provisions of the General Corporation Law, to each record holder of Preferred Stock. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, cash as provided in Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly

executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redemption.

(a) Redemption. Shares of Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the applicable Original Issue Price per share with respect to a series of Preferred Stock, plus all declared but unpaid dividends thereon (the "Redemption Price"), in two installments (each, an "Installment") the first Installment of which shall be made 30 days after receipt by the Corporation at any time on or after January 31, 2016 from the holders of at least a majority of the then outstanding shares of Preferred Stock (calculated on an as-converted to Common Stock basis), of written notice requesting redemption of all shares of Preferred Stock, and the second Installment of which shall be made on the 12-month anniversary thereof (the date of each Installment being referred to as a "Redemption Date"). On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Preferred Stock owned by each holder, 50% of the aggregate number of then shares of Preferred Stock outstanding as of the first such Redemption Date; provided, however, that Excluded Shares (as such term is defined in subsection (b) of this Section 6) shall not be redeemed and shall be excluded from the calculations set forth in this sentence. If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of Preferred Stock and of any other class or series of stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of Preferred Stock (such pro rata portion to be determined based on the aggregate Redemption Price payable to each such holder) out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

(b) Redemption Notice. Written notice of the mandatory redemption (the "Redemption Notice") shall be mailed, postage prepaid, to each holder of record of Preferred Stock, at its post office address last shown on the records of the Corporation, or given by

electronic communication in compliance with the provisions of the General Corporation Law, not less than 40 days prior to the initial Redemption Date. The Redemption Notice shall state:

- (I) the aggregate number of shares of Preferred Stock held by the holder that the Corporation shall redeem on the initial Redemption Date specified in the Redemption Notice and the subsequent Redemption Date;
- (II) the initial Redemption Date, the Redemption Price and the amount of each Installment;
- (III) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection 4(a)); and
- (IV) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

If the Corporation receives, on or prior to the 20th day after the date of delivery of the Redemption Notice to a holder of Preferred Stock, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 6, then the shares of Preferred Stock registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "Excluded Shares".

(c) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4 hereof, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Installment of the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

(d) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Installment of the Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, dividends, if any, with respect to such shares of Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption

Date terminate, except only the right of the holders to receive the applicable Installment of the Redemption Price without interest upon surrender of their certificate or certificates therefor.

(e) Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock which are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately canceled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption.

(f) Termination of Redemption Right. The rights described in this Section 6 shall terminate upon either of (x) the closing of the sale of shares of Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$25,000,000 of proceeds, net of the underwriting discount and commissions, to the Corporation, or (y) a Deemed Liquidation Event.

7. Waiver. Except as otherwise set forth in this Certificate of Incorporation, any of the rights, powers, preferences and other terms of a particular series of Preferred Stock set forth herein may be waived in writing on behalf of all holders of such series of Preferred Stock and with respect to all shares of such series of Preferred Stock by the affirmative consent or vote of the holders of at least a majority of the shares of such series of Preferred Stock then outstanding.

FIFTH: Subject to any additional vote required by the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

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

EIGHTH: Meetings of stockholders 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 outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

NINTH:

1. Elimination of Personal Liability. The Corporation eliminates the personal liability of each member of its Board of Directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that, to the extent provided by applicable law, the foregoing shall not eliminate the liability of a director (i) for any breach of such 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 Title 8 of the General Corporation Law or (iv) for any

transaction from which such director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

If the General Corporation Law is amended in the future 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, as so amended from time to time.

Any repeal or modification of this Article shall not increase the personal liability of any director of this Corporation for any act or occurrence taking place prior to such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

2. Indemnification.

(a) **Right to Indemnification.** Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith. Such indemnification shall continue as to an indemnitee who has ceased to be a director, officer or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that except as provided in paragraph (b) hereof with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the General Corporation Law so requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such

indemnatee is not entitled to be indemnified for such expenses under this Section, the General Corporation Law or otherwise (hereinafter an "undertaking").

(b) Right of Indemnatee to Bring Suit. If a claim under paragraph (a) of this Section is not paid in full by the Corporation within ninety days after a written claim has been received by the Corporation, the indemnatee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnatee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnatee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnatee to enforce a right to an advancement of expenses) it shall be a defense that the indemnatee has not met the applicable standard of conduct set forth in the General Corporation Law, and (ii) any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnatee has not met the applicable standard of conduct set forth in the General Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnatee is proper in the circumstances because the indemnatee has met the applicable standard of conduct set forth in the General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnatee has not met such applicable standard of conduct, shall create a presumption that the indemnatee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnatee, be a defense to such suit. In any suit brought by the indemnatee to enforce a right hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnatee is entitled to be indemnified or to such advancement of expenses under this Section or otherwise shall be on the indemnatee. No potential indemnatee shall be entitled to advancement of expenses under this Certificate of Incorporation or the By-Laws in any action involving a proceeding by the Corporation against the indemnatee for any claim by the Corporation involving a breach of fiduciary duty of the indemnatee to the Corporation, gross negligence, bad faith, intentional misconduct or unlawful conduct.

(c) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this Certificate of Incorporation, By-law, contract or agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law.

(e) Indemnification of Employees or Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant

rights to indemnification and to the advancement of expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of directors, and officers of the Corporation.

TENTH: Subject to any additional vote required by the Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in the Certificate of Incorporation, in the manner now or hereafter prescribed by statute.

ELEVENTH: In the event that a director of the Corporation who is also a partner or employee of an entity that is a holder of Preferred Stock and that is in the business of investing and reinvesting in other companies or entities, or an employee or principal of an entity that manages or controls such an entity (each, a "Fund"), acquires knowledge of a potential transaction or matter in such person's capacity as a partner, principal or employee of the Fund or the manager or general partner of the Fund and that may be a corporate opportunity for both the Corporation and such Fund (a "**Corporate Opportunity**"), then (i) such Corporate Opportunity shall belong to such Fund, (ii) by providing such Corporate Opportunity to the Fund such director shall, to the extent permitted by law, have fully satisfied and fulfilled his fiduciary duty to the Corporation and its stockholders with respect to such Corporate Opportunity, and (iii) the Corporation, to the extent permitted by law, waives any claim that such Corporate Opportunity constituted a corporate opportunity that should have been presented to the Corporation; provided, however, that such director acts in good faith and such opportunity was not offered to such director in his or her capacity as a director of the Corporation.

* * *

IN WITNESS WHEREOF, VideoEgg, Inc. has caused this Eighth Amended and Restated Certificate of Incorporation to be executed by Matt Sanchez, its Chief Executive Officer, this 12th day of January, 2011.

VIDEOEGG, INC.


Matt Sanchez

Chief Executive Officer