

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
Cleeves Engines, Inc.	12/01/2010
RECEIVING PARTY DATA	
Name:	Pinnacle Engines, Inc.
Street Address:	1300 Industrial Road, Suite 1A
City:	San Carlos
State/Country:	CALIFORNIA
Postal Code:	94070
PROPERTY NUMBERS Total: 2	
Property Type	Number
Application Number:	12710248
Application Number:	12720457
CORRESPONDENCE DATA	
Fax Number:	
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	858 314-1500
Email:	tjoel@mintz.com
Correspondent Name:	Mintz Levin
Address Line 1:	One Financial Center
Address Line 4:	Boston, MASSACHUSETTS 02111
ATTORNEY DOCKET NUMBER:	38328-505001US
NAME OF SUBMITTER:	Michael D. Van Loy
Signature:	/mdvl/
Date:	09/18/2013

OP \$80.00 12710248

Total Attachments: 16

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Delaware

PAGE 1

The First State

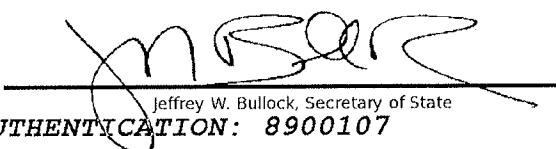
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "CLEEVES ENGINES, INC.", CHANGING ITS NAME FROM "CLEEVES ENGINES, INC." TO "PINNACLE ENGINES, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF DECEMBER, A.D. 2010, AT 7:35 O'CLOCK P.M.

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




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8900107

DATE: 07-13-11

PATENT
REEL: 031239 FRAME: 0106

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:39 PM 12/01/2010
FILED 07:35 PM 12/01/2010
SRV 101139433 - 4400562 FILE

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
CLEEVES ENGINES, INC.

Cleeves Engines, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware DOES HEREBY CERTIFY:

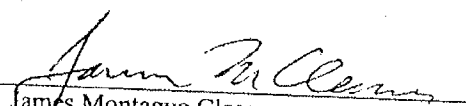
FIRST: The original Certificate of Incorporation of Cleeves Engines, Inc. was filed with the Secretary of State of Delaware on August 2, 2007.

SECOND: The Second Amended and Restated Certificate of Incorporation of Cleeves Engines, Inc. (which changes the name of the corporation to Pinnacle Engines, Inc.) in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 245, 242 and 228 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.

THIRD: The Second Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Cleeves Engines, Inc. has caused this Certificate to be signed by the Chief Executive Officer this 1st day of December, 2010.

By


James Montague Cleeves
Chief Executive Officer

MP1:1192685

EXHIBIT A

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
PINNACLE ENGINES, INC.

FIRST: The name of the corporation (hereinafter called the "*Corporation*") is Pinnacle Engines, Inc.

SECOND: The address of the registered office of the Corporation in the State of Delaware and the County of New Castle is 2711 Centerville Road, Suite 400, Wilmington, Delaware and the name of the registered agent at that address is Corporation Service Company.

THIRD: 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 (the "*General Corporation Law*").

FOURTH:

A. This Corporation is authorized to issue two classes of shares to be designated respectively preferred stock ("*Preferred Stock*") and common stock ("*Common Stock*"). The total number of shares of capital stock that the Corporation is authorized to issue is Seventy Million Five Hundred Thirty Two Thousand Five Hundred Eighty Seven (70,532,587). The total number of shares of Preferred Stock this Corporation shall have authority to issue is Twenty Eight Million Five Hundred Thirty Two Thousand Five Hundred Eighty Seven (28,532,587). The total number of shares of Common Stock this Corporation shall have authority to issue is Forty Two Million (42,000,000). The Preferred Stock shall have a par value of \$0.0001 per share and the Common Stock shall have a par value of \$0.0001 per share.

B. The Preferred Stock shall be divided into series. The first series shall be designated "*Series A Preferred Stock*" and shall consist of Ten Million Four Hundred Sixteen Thousand Six Hundred Sixty Six (10,416,666) shares. The second series shall be designated "*Series B Preferred Stock*" and shall consist of Eighteen Million One Hundred Fifteen Thousand Nine Hundred Twenty One (18,115,921) shares.

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

1. Dividends.

a. The holders of Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive on a pari passu basis annual dividends (i) in the case of the Series A Preferred Stock at the rate of \$0.03072 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum and (ii) in the case of the Series B Preferred Stock at the rate of \$0.044831 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 (payable other than in Common Stock) on the Common Stock of this Corporation. Such dividends shall

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be payable only when, as, and if declared by the Board of Directors of the Corporation (the "*Board of Directors*") and shall be non-cumulative.

b. After the holders of the Series A Preferred Stock and Series B Preferred Stock have received their full dividend preferences as set forth above, any additional dividends or distributions declared by the Board of Directors out of funds legally available therefor shall be distributed ratably among all holders of Common Stock and Preferred Stock (on an as-converted to Common Stock basis) as of the record date fixed for determining those entitled to receive such distribution.

c. In the event the Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution pursuant to Section C.1(a) above.

2. Liquidation Preference.

a. In the event of any Liquidation Event (as defined below), whether voluntary or involuntary, the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive on a pari passu basis, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, (i) the amount of \$0.384 per share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits or the like with respect to such shares) plus all declared but unpaid dividends on such share for each share of Series A Preferred Stock then held by them, and (ii) the amount of \$0.560384 per share of Series B Preferred Stock (as adjusted for any stock dividends, combinations, splits or the like with respect to such shares) plus all 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 A Preferred Stock and 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 A Preferred Stock and Series B Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive under this subsection (a).

b. After payment in full of the liquidation preference with respect to the Series A Preferred Stock and Series B Preferred Stock as provided in subsection (a) of this Section C.2, if any assets remain in the Corporation, the holders of the Common Stock shall be entitled to receive the remaining assets and funds legally available therefor distributed ratably among the holders of Common Stock based on the number of shares of Common Stock then held by each.

c. For purposes of this Section C.2, unless otherwise agreed in writing by the holders of at least seventy-five percent (75%) of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting together as a single class on an as-converted basis), a Liquidation Event shall include (i) any acquisition of the Corporation by

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means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary and in which the holders of capital stock of the Corporation hold less than 50% of the voting power of the surviving entity (other than a mere reincorporation transaction), (ii) a sale of all or substantially all of the assets of the Corporation, (iii) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of this Corporation's securities), of this Corporation's then outstanding securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of this Corporation (other than an equity financing effected primarily for capital raising purposes), (iv) an exclusive, irrevocable licensing of all or substantially all of the Corporation's intellectual property to an unaffiliated third party, or (v) a liquidation, dissolution or winding up of the Corporation. Notwithstanding the foregoing, the issuance of newly issued shares of Preferred Stock of the Corporation in a financing transaction shall not be deemed a liquidation, dissolution or winding up of the Corporation.

d. Whenever the distribution provided for in this Section C.2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such other property as determined in good faith by the Board of Directors, including at least 1 director designated by the holders of Series A Preferred Stock. Any securities distributed pursuant to this section C.2 shall be valued as follows:

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

(1) If traded on a securities exchange, the value shall be based on a formula approved by the Board of Directors and derived from the closing prices of the securities on such exchange over a specified time period;

(2) If actively traded over-the-counter, the value shall be based on a formula approved by the Board of Directors and derived from the closing bid or sales prices (whichever is applicable) of such securities over a specified time period; 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, including at least 1 director designated by the holders of Series A Preferred Stock.

(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 specified above in Section C.2.d.i to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors, including at least 1 director designated by the holders of Series A Preferred Stock.

e. The Corporation shall give each holder of record of Preferred Stock written notice of any impending Liquidation Event not later than 10 days prior to the stockholders' meeting called to approve such Liquidation Event, or 10 days prior to the closing

of such Liquidation Event, whichever is earlier, and shall also notify such holders in writing of the final approval of such Liquidation Event. The first of such notices shall describe the material terms and conditions of the impending Liquidation Event and the provisions of this Section C.2, and the Corporation shall thereafter give such holders prompt notice of any material changes. Unless such notice requirements are waived, the Liquidation Event shall not take place sooner than 10 days after the Corporation has given the first notice provided for herein or sooner than 10 days after the Corporation has given notice of any material changes provided for herein. Notwithstanding the other provisions of this Second Amended and Restated Certificate of Incorporation, all notice periods or requirements in this Second Amended and Restated Certificate of Incorporation may be shortened or waived, either before or after the action for which notice is required, upon the written consent of the holders of seventy-five percent (75%) of the outstanding shares of Preferred Stock that are entitled to such notice rights (voting together as a single class on an as-converted basis).

f. Unless otherwise agreed in writing by either the Board or the holders of at least seventy-five percent (75%) of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock (voting together as a single class on an as-converted basis), in the event the requirements of this Section C.2 are not complied with, the Corporation shall forthwith either cause the closing of the Liquidation Event to be postponed until the requirements of this Section C.2 have been complied with, or cancel such Liquidation Event, in which event the rights, preferences, privileges and restrictions of the holders of Series A Preferred Stock and Series B Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the first notice referred to in Section C.2.e.

3. Redemption. The Series A Preferred Stock, Series B Preferred Stock and Common Stock shall not be redeemable by the holders.

4. Voting Rights; Directors.

a. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Preferred Stock could 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 Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward). Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held. 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 a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

b. The holders of Series A Preferred Stock, voting separately as a separate series on an as-converted basis, shall be entitled to elect two (2) members of the Board

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of Directors at any election of directors, whether at a meeting or otherwise. The holders of the Common Stock, voting as a single class, shall be entitled to elect one (1) member of the Board of Directors at any election of directors, whether at a meeting or otherwise. The holders of the Preferred Stock and Common Stock, voting together as a single class on an as-converted basis, shall be entitled to elect any remaining members of the Board of Directors at any election of directors, whether at a meeting or otherwise.

c. Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Second Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; *provided, however*, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

5. 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 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, \$0.384, as adjusted for any stock dividends, combinations, splits or the like with respect to such shares (as adjusted, the "**Original Series A Issue Price**") by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The Conversion Price for shares of Series A Preferred Stock (the "**Series A Conversion Price**") shall initially be \$0.384 per share of Series A Preferred Stock. Such initial Series A Conversion Price shall be adjusted as hereinafter provided.

(ii) In the case of the Series B Preferred Stock, \$0.560384, as adjusted for any stock dividends, combinations, splits or the like with respect to such shares (as adjusted, the "**Original Series B Issue Price**") by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate

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is surrendered for conversion. The Conversion Price for shares of Series B Preferred Stock (the "*Series B Conversion Price*") shall initially be \$0.560384 per share of Series B Preferred Stock. Such initial Series B Conversion Price shall be adjusted as hereinafter provided.

b. Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Conversion Price applicable to such share upon the earlier of (i) the date specified by written consent or agreement of holders of at least seventy-five percent (75%) of the shares of Series A Preferred Stock and Series B 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 on the NYSE or the NASDAQ registered under the Securities Act of 1933, as amended (the "*Securities Act*"), (other than a registration relating solely to a transaction under Rule 145 under the Securities Act (or any successor thereto) or to an employee benefit plan of the Corporation), the public offering price of which is not less than \$3.00 per share (as adjusted for any stock dividends, combinations, splits or the like with respect to such shares) and which results in aggregate proceeds to the Corporation (before payment of any underwriters' discounts and expenses relating to the issuance) of at least \$20,000,000 (a "*Qualified Public Offering*").

c. Mechanics of Conversion.

(i) Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he, she or it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation at such office that he, she or it elects to convert the same and shall state therein the name or names in which he, she or it 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, she or it 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 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.

(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. If the conversion is in connection with automatic conversion provisions of subsection 5(b)(i) above, 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.

Issuances. d. Adjustments to Conversion Price for Certain Diluting

(i) Special Definitions. For purposes of this Section C.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 first date on which a share of Series B Preferred Stock was issued by the Corporation.

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

(4) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued (or, pursuant to Section C.5(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issuable or issued:

(A) upon the exercise or conversion of exercisable securities or Convertible Securities outstanding as of the Original Issue Date;

(B) upon the conversion of shares of Preferred Stock issued at an issue price at or above the then applicable Conversion Price of such series of Preferred Stock;

(C) in the amount of up to 7,781,722 shares (subject to increase upon approval by the Board of Directors, including at least one of the directors designated by the holders of Series A Preferred Stock) (net of cancellation, termination, repurchases and the like) to officers, directors, employees, consultants, advisors or contractors of the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors (including at least one of the directors designated by the holders of Series A Preferred Stock);

(D) in connection with equipment lease financings, bank credit arrangements, real estate leases or similar transactions entered into primarily for non-equity financing purposes approved by the Board of Directors (including at least one of the directors designated by the holders of Series A Preferred Stock);

(E) as a dividend or distribution on the Preferred Stock;

(F) in connection with a partnering transaction or a bona fide acquisition of a business or any assets or properties or technology of or by the Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or

otherwise, entered into primarily for non-equity financing purposes and pursuant to agreements approved by the Board of Directors (including at least one of the directors designated by the Series A Preferred Stock);

(G) in a firm-commitment underwritten public offering or upon exercise of warrants or rights granted to underwriters in connection with such an offering;

(H) approved by holders of at least seventy-five percent (75%) of the shares of Preferred Stock then outstanding (voting together as a single class on an as-converted basis); or

(I) for which adjustment of the Series A Conversion Price or Series B Conversion Price is made pursuant to Sections C.5(e) or C.5(f).

(ii) No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price for Series A Preferred Stock or Series B Preferred Stock shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section C.5(d)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price for the Series A Preferred Stock or Series B Preferred Stock 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 designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the exercise of such Options for Convertible Securities and 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) no further adjustments in the Series A Conversion Price or Series B 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 increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Series A Conversion Price and Series B 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 insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(3) upon the expiration of any such Options or rights, the termination of any such rights to convert or exchange or the expiration of any Options or rights related to such Convertible Securities or exchangeable securities, the Series A Conversion Price and Series B Conversion Price, to the extent in any way affected by or computed using such Options, rights or Convertible Securities or Options or rights related to such Convertible Securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such Options or rights, upon the conversion or exchange of such Convertible Securities or upon the exercise of the Options or rights related to such Convertible Securities;

(4) no readjustment pursuant to clause (2) or (3) above shall have the effect of increasing the Series A Conversion Price or Series B Conversion Price above the Conversion Price in effect immediately prior to such readjustment.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this 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.5(d)(iii)) without consideration or for a consideration per share less than the Conversion Price of any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price of such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price 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 on a fully diluted basis, as if all outstanding shares of Preferred Stock and all Convertible Securities had been fully converted into shares of Common Stock and any outstanding warrants, options or other rights for the purchase of shares of stock or convertible securities had been fully exercised (and the resulting securities fully converted into shares of Common Stock, if so convertible) as of such date.

(v) Determination of Consideration. For purposes of this Section C.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 for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors, including at least 1 director designated by the holders of Series A Preferred Stock; 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 which 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 of Directors, including at least 1 director designated by the holders of Series A Preferred Stock.

(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.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 designed to protect against dilution) 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 designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

e. Adjustments to Conversion Price for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that this 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 in the event 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 Series A Conversion Price and Series B Conversion Price 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 this 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. Adjustments for Reclassifications and Reorganizations. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section C.5(e) above or a merger or other reorganization referred to in Section C.2(c) above), provision shall be made so that, concurrently with the effectiveness of such reorganization or reclassification, the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which 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 the Preferred Stock immediately before that change.

g. No Impairment. The Corporation will not, without the appropriate vote of the stockholders pursuant to the General Corporation Law and Section C.6 hereof, 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.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 Preferred Stock against impairment.

h. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section C.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 Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer 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 at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Preferred Stock.

i. Notices of Record Date. In the event that 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 effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iii) 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 ten (10) days prior written notice of the date on which a record shall be taken for such dividend, distribution 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 (ii) and (iii) above; and (2) in the case of the matters referred to in (ii) and (iii) above, at least ten (10) 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).

j. Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

k. 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 of Incorporation.

l. Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares 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).

m. Notices. Any notice required by the provisions of this Section C.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, or by overnight courier, and addressed to each holder of record at his address appearing on the books of the Corporation. The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the vote or written consent of the holders of at least seventy-five percent (75%) of the Preferred Stock, voting together as a single class and on an as-converted basis.

6. Restrictions and Limitations. For so long as at least 1,000,000 shares of Preferred Stock remain outstanding (as adjusted for any stock dividends, combinations, splits or the like with respect to such shares), the Corporation shall not (either directly or indirectly, whether by amendment, merger, consolidation or otherwise), without the vote or written consent

by the holders of at least seventy-five percent (75%) of the then outstanding shares of Preferred Stock, voting together as a single class and on an as-converted basis:

a. amend or repeal any provision of this Second Amended and Restated Certificate of Incorporation or the Bylaws of this Corporation in a manner that adversely affects the rights, preferences or privileges of the Preferred Stock or that otherwise adversely affects the holders of Preferred Stock as a class;

b. authorize or create any equity security (including any security convertible into or exercisable for any equity security) having rights, preferences or privileges senior to or on a parity with the Preferred Stock;

c. declare or pay any dividend or distribution on any shares of Common Stock (other than a dividend or distribution payable solely in shares of Common Stock);

d. consummate a Liquidation Event;

e. redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose), any shares of Common Stock or Preferred Stock, provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock (x) from employees, officers, directors, consultants, advisors or other persons performing services for the Corporation or any subsidiary in connection with the cessation of their provision of services, at the lower of fair market value or cost, or otherwise as approved by the Board of Directors, including at least one director designated by the holders of Series A Preferred Stock;

f. increase or decrease the aggregate number of authorized shares of Common Stock or Preferred Stock;

g. authorize, guarantee or otherwise become responsible for any indebtedness other than (i) unsecured debt of \$500,000 or less in the aggregate at any time outstanding or (ii) unsecured indebtedness incurred in the ordinary course of business; or

h. increase or decrease the authorized number of directors of this Corporation.

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

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors shall have the power, subject to the provisions of Section C.6 of Article FOURTH, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise alter the Bylaws of the Corporation without any action on the part of the stockholders.

SIXTH: Elections of directors need not be by written ballot unless the Bylaws of

the Corporation shall so provide.

SEVENTH: The Corporation reserves the right to adopt, repeal, rescind or amend in any respect any provisions contained in this Second Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, subject to the terms hereof, and all rights conferred on stockholders herein are granted subject to this reservation.

EIGHTH: 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 Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize Corporation 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 Delaware General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article EIGHTH by the stockholders of this Corporation shall not adversely affect any right or protection of a director of this Corporation existing at the time of, or increase the liability of any director of this Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

NINTH: To the fullest extent permitted by applicable law, this Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers or agents of this Corporation (and any other persons to which General Corporation Law permits this Corporation to provide indemnification) through Bylaw provisions, agreements with such directors, officers or agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this Corporation, its stockholders, and others. Any amendment, repeal or modification of the foregoing provisions of this Article NINTH shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director, officer, agent or other person of this Corporation with respect to any acts or omissions of such director, officer, agent or other person occurring prior to, such amendment, repeal or modification.

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