

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT2646905

SUBMISSION TYPE:	NEW ASSIGNMENT										
NATURE OF CONVEYANCE:	MERGER										
EFFECTIVE DATE:	07/12/2004										
CONVEYING PARTY DATA											
<table border="1"> <thead> <tr> <th>Name</th> <th>Execution Date</th> </tr> </thead> <tbody> <tr> <td>UNITY SEMICONDUCTOR CORPORATION</td> <td>07/12/2004</td> </tr> </tbody> </table>		Name	Execution Date	UNITY SEMICONDUCTOR CORPORATION	07/12/2004						
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<table border="1"> <tr> <td>Name:</td> <td>UNITY SEMICONDUCTOR CORPORATION</td> </tr> <tr> <td>Street Address:</td> <td>250 N WOLFE ROAD</td> </tr> <tr> <td>City:</td> <td>SUNNYVALE</td> </tr> <tr> <td>State/Country:</td> <td>CALIFORNIA</td> </tr> <tr> <td>Postal Code:</td> <td>94085</td> </tr> </table>		Name:	UNITY SEMICONDUCTOR CORPORATION	Street Address:	250 N WOLFE ROAD	City:	SUNNYVALE	State/Country:	CALIFORNIA	Postal Code:	94085
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PROPERTY NUMBERS Total: 2											
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CORRESPONDENCE DATA											
<p>Fax Number:</p> <p>Email: twain@rambus.com <i>Correspondence will be sent via US Mail when the email attempt is unsuccessful.</i></p> <p>Correspondent Name: TARISA WAIN Address Line 1: 1050 ENTERPRISE WAY, SUITE 700 Address Line 4: SUNNYVALE, CALIFORNIA 94089</p>											
ATTORNEY DOCKET NUMBER:	CHEETAH #8										
NAME OF SUBMITTER:	TARISA WAIN										
Signature:	/Tarisa Wain/										
Date:	12/12/2013										

PATENT

Total Attachments: 25

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Delaware

PAGE 1

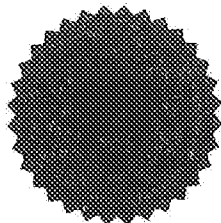
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"UNITY SEMICONDUCTOR CORPORATION", A CALIFORNIA CORPORATION, WITH AND INTO "UNITY SEMICONDUCTOR CORPORATION" UNDER THE NAME OF "UNITY SEMICONDUCTOR CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, WAS RECEIVED AND FILED IN THIS OFFICE THE TWELFTH DAY OF JULY, A.D. 2004, AT 2:01 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3349798

DATE: 09-14-04

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PATENT

REEL: 01632 PATENT: 0109

REEL: 031774 FRAME: 0703

RECORDED: 07/28/2005



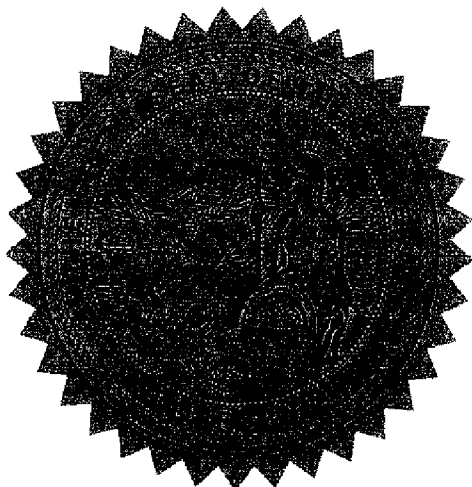
SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 23 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUL 13 2004



Kevin Shelley
Secretary of State

Delaware

The First State

ENDORSED - FILED
In the office of the Secretary of State
PAGE of the State of California

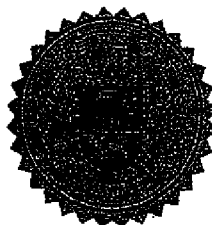
JUL 12 2004

KEVIN SHELLEY
Secretary of State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"UNITY SEMICONDUCTOR CORPORATION", A CALIFORNIA CORPORATION, WITH AND INTO "UNITY SEMICONDUCTOR CORPORATION" UNDER THE NAME OF "UNITY SEMICONDUCTOR CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWELFTH DAY OF JULY, A.D. 2004, AT 2:01 O'CLOCK P.M.

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



3818325 8100M

040509211

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3227152

DATE: 07-12-04

PATENT
REEL: 031774 FRAME: 0705

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "*Merger Agreement*") is entered into as of July 12, 2004, by and between Unity Semiconductor Corporation, a California corporation ("*Unity California*"), and Unity Semiconductor Corporation, a Delaware corporation ("*Unity Delaware*"). Unity California and Unity Delaware are hereinafter sometimes collectively referred to as the "*Constituent Corporations*".

RECITALS

A. Unity California was incorporated on August 20, 2001. Its current authorized capital stock consists of: (i) 50,000,000 shares of Common Stock, no par value ("*Unity California Common Stock*"), of which 6,777,800 shares are issued and outstanding; and (ii) 12,326,920 shares of Preferred Stock, no par value ("*Unity California Preferred Stock*"), of which 12,084,929 shares are issued and outstanding (consisting of 3,426,920 shares of Series 1 Preferred Stock and 8,658,009 shares of Series 2 Preferred Stock).

B. Unity Delaware was incorporated on June 28, 2004. Its authorized capital stock consists of 1,000 shares of Common Stock, with a par value of \$0.0001 per share ("*Unity Delaware Common Stock*"), of which 100 shares are issued and outstanding.

C. The respective Boards of Directors of Unity California and Unity Delaware deem it advisable and to the advantage of each of the Constituent Corporations that Unity California merge with and into Unity Delaware upon the terms and subject to the conditions set forth in this Merger Agreement for the purpose of effecting a change of the state of incorporation of Unity California from California to Delaware.

D. The Boards of Directors of each of the Constituent Corporations have approved this Merger Agreement.

NOW, THEREFORE, the parties do hereby adopt the plan of reorganization set forth in this Merger Agreement and do hereby agree that Unity California shall merge with and into Unity Delaware on the following terms, conditions and other provisions:

1. **Merger and Effective Time.** At the Effective Time (as defined below), Unity California shall be merged with and into Unity Delaware (the "*Merger*"), and Unity Delaware shall be the surviving corporation of the Merger (the "*Surviving Corporation*"). The Merger shall become effective upon the date hereof (the "*Effective Time*").

2. **Effect of Merger.** At the Effective Time, the separate corporate existence of Unity California shall cease; the corporate identity, existence, powers, rights and immunities of Unity Delaware as the Surviving Corporation shall continue unimpaired by the Merger; and Unity Delaware shall succeed to and shall possess all the assets, properties, rights, privileges, powers, franchises, immunities and purposes, and be subject to all the debts, liabilities, obligations, restrictions and duties of Unity California, all without further act or deed.

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:01 PM 07/12/2004
FILED 02:01 PM 07/12/2004
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3. **Governing Documents.** At the Effective Time, (a) the Certificate of Incorporation of Unity Delaware in effect immediately prior to the Effective Time shall be amended and restated by virtue of the Merger to read as set forth in full in Exhibit "A" hereto (the "Restated Certificate"), and (b) the Bylaws of Unity Delaware in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation.

4. **Directors and Officers.** At the Effective Time, the directors of Unity Delaware shall be and become the directors of the Surviving Corporation, and the officers of Unity Delaware shall be and become the officers (holding the same offices) of the Surviving Corporation, and after the Effective Time shall serve in accordance with the Restated Certificate and Bylaws of the Surviving Corporation.

5. **Conversion of Shares of Unity California.** At the Effective Time, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, (i) each share of Unity California Common Stock issued and outstanding immediately prior thereto shall be automatically converted into one fully paid and nonassessable, issued and outstanding share of Unity Delaware Common Stock, (ii) each share of Unity California Series 1 Preferred Stock outstanding immediately prior thereto shall be automatically converted into one fully paid and nonassessable, issued and outstanding share of Unity Delaware Series 1 Preferred Stock, and (iii) each share of Unity California Series 2 Preferred Stock outstanding immediately prior thereto shall be automatically converted into one fully paid and nonassessable, issued and outstanding share of Unity Delaware Series 2 Preferred Stock.

6. **Cancellation of Shares of Unity Delaware.** At the Effective Time, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, all of the previously issued and outstanding shares of Unity Delaware Common Stock that were issued and outstanding immediately prior to the Effective Time shall be automatically canceled and returned to the status of authorized but unissued shares.

7. **Stock Certificates.** At and after the Effective Time, all of the outstanding certificates that, prior to that date, represented shares of Unity California Common Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Unity Delaware Common Stock into which such shares of Unity California Common Stock are converted as provided herein. At and after the Effective Time, all of the outstanding certificates that, prior to that date, represented shares of a series of Unity California Preferred Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of the series of shares of Unity Delaware Preferred Stock, into which such shares of Unity California Preferred Stock are converted as provided herein. The registered owner on the books and records of Unity California of any such outstanding stock certificate for Unity California Common Stock or Unity California Preferred Stock shall, until such certificate is surrendered for transfer or otherwise accounted for to Unity Delaware or its transfer agent, be entitled to exercise any voting and other rights with respect to, and to receive any dividend and other distributions upon, the shares of Unity Delaware Common Stock or Unity Delaware Preferred Stock evidenced by such outstanding certificate as provided above.

8. **Assumption of Options and Warrants.** At the Effective Time, all outstanding and unexercised portions of all options to purchase Unity California Common Stock under the

Unity California 2001 Equity Incentive Plan (the "**Existing Plan**") shall be assumed by Unity Delaware and become options to purchase the same number of shares of Unity Delaware Common Stock at the same exercise price per share and otherwise shall, to the extent permitted by law and otherwise reasonably practicable, have the same term, exercisability, vesting schedule, status as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "**Code**"), if applicable, and all other material terms and conditions (including but not limited to the terms and conditions applicable to such options by virtue of the Existing Plan). Continuous employment with Unity California will be credited to an optionee for purposes of determining the vesting of the number of shares of Unity Delaware Common Stock subject to exercise under an assumed Unity California option at the Effective Time. At the Effective Time, Unity Delaware shall adopt and assume the Existing Plan. Additionally, at the Effective Time, all outstanding and unexercised portions of all warrants to purchase or acquire Unity California Common Stock or any series of Unity California Preferred Stock shall be assumed by Unity Delaware and become warrants to purchase or acquire the same number of shares of Unity Delaware Common Stock or the corresponding series of Unity Delaware Preferred Stock, as the case may be, at the same exercise price per share and otherwise with the same term, exercisability, and all other material terms and conditions.

9. **Fractional Shares.** No fractional shares of Unity Delaware Common Stock or Unity Delaware Preferred Stock will be issued in connection with the Merger.

10. **Employee Benefit Plans.** At the Effective Time, the obligations of Unity California under or with respect to every plan, trust, program and benefit then in effect or administered by Unity California for the benefit of the directors, officers and employees of Unity California or any of its subsidiaries shall become the lawful obligations of Unity Delaware and shall be implemented and administered in the same manner and without interruption until the same are amended or otherwise lawfully altered or terminated. Effective at the Effective Time, Unity Delaware hereby expressly adopts and assumes all obligations of Unity California under such employee benefit plans.

11. **Further Assurances.** From time to time, as and when required by the Surviving Corporation or by its successors or assigns, there shall be executed and delivered on behalf of Unity California such deeds, assignments and other instruments, and there shall be taken or caused to be taken by it all such further action, as shall be appropriate, advisable or necessary in order to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation the title to and possession of all property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Unity California, and otherwise to carry out the purposes of this Merger Agreement. The officers and directors of the Surviving Corporation are fully authorized in the name of and on behalf of Unity California, or otherwise, to take any and all such actions and to execute and deliver any and all such deeds and other instruments as may be necessary or appropriate to accomplish the foregoing.

12. **Condition.** The consummation of the Merger is subject to the approval of this Merger Agreement and the Merger contemplated hereby by the shareholders of Unity California and by the sole stockholder of Unity Delaware, prior to or at the Effective Time.

13. **Abandonment.** At any time before the Effective Time, this Merger Agreement may be terminated and the Merger abandoned by the Board of Directors of Unity California or Unity Delaware, notwithstanding approval of this Merger Agreement by the shareholders of Unity California and the sole stockholder of Unity Delaware.

14. **Amendment.** At any time before the Effective Time, this Merger Agreement may be amended, modified or supplemented by the Boards of Directors of the Constituent Corporations, notwithstanding approval of this Merger Agreement by the shareholders of Unity California and the sole stockholder of Unity Delaware; provided, however, that any amendment made subsequent to the adoption of this Merger Agreement by the shareholders of Unity California or the sole stockholder of Unity Delaware shall not: (i) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or upon conversion of any shares of any class or series of Unity California; (ii) alter or change of any of the terms of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger; or (iii) alter or change any of the terms or conditions of this Merger Agreement if such alteration or change would adversely affect the holders of any shares of any class or series of Unity California or Unity Delaware.

15. **Tax-Free Reorganization.** The Merger is intended to be a tax-free plan of reorganization within the meaning of Section 368(a)(1)(F) of the Code.

16. **Governing Law.** This Merger Agreement shall be governed by and construed under the internal laws of the State of Delaware.

17. **Counterparts.** In order to facilitate the filing and recording of this Merger Agreement, it may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[The remainder of this page was left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have caused this Merger Agreement to be duly executed on the date and year first above written.

Unity Semiconductor Corporation,
a California corporation

Unity Semiconductor Corporation,
a Delaware corporation

By: /s/ Darrell Rinerson
Darrell Rinerson
President and Chief Executive Officer

By: /s/ Darrell Rinerson
Darrell Rinerson
President and Chief Executive Officer

By: /s/ David Bostwick
David Bostwick
Secretary

By: /s/ David Bostwick
David Bostwick
Secretary

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

EXHIBIT "A"

RESTATED CERTIFICATE OF INCORPORATION

22943/00600/DOCS/1444926.2

PATENT
REEL: 031774 FRAME: 0711

**RESTATED CERTIFICATE OF INCORPORATION
OF
UNITY SEMICONDUCTOR, INC.**

Unity Semiconductor, Inc., a Delaware corporation, hereby certifies that:

1. The name of the corporation is Unity Semiconductor, Inc. The date of filing its original Certificate of Incorporation with the Secretary of State was June 28, 2004.

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

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

Dated: July 12, 2004

Unity Semiconductor, Inc.

By: /s/ Darrell Rinerson

Name: Darrell Rinerson

Title: President and Chief Executive Officer

EXHIBIT "1"
RESTATED CERTIFICATE OF INCORPORATION
OF
UNITY SEMICONDUCTOR CORPORATION

ARTICLE I

The name of the corporation is Unity Semiconductor Corporation.

ARTICLE II

The address of the registered office of the corporation in the State of Delaware is 15 East North Street, City of Dover, County of Kent, DE 19901. The name of its registered agent at that address is Incorporating Services, Ltd.

ARTICLE III

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

ARTICLE IV

This corporation is authorized to issue two (2) classes of shares, designated "Common Stock" and "Preferred Stock," respectively, both of which shall have par value of \$0.0001 per share. The total number of shares of Common Stock authorized to be issued is 50,000,000 shares. The total number of shares of Preferred Stock authorized to be issued is 12,326,920 shares, 3,426,920 of which is designated as "Series 1 Preferred Stock" and 8,943,724 of which is designated as "Series 2 Preferred Stock".

ARTICLE V

The rights, preferences, privileges and restrictions granted to and imposed on the Series 1 Preferred Stock, the Series 2 Preferred Stock and the Common Stock are as follows:

1. **Definitions.** For purposes of this Article VI, the following definitions apply:
 - 1.1 "**Board**" shall mean the Board of Directors of the Corporation.
 - 1.2 "**Corporation**" shall mean this corporation.
 - 1.3 "**Common Stock**" shall mean the Common Stock, no par value, of the Corporation.
 - 1.4 "**Common Stock Dividend**" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

1.5 "*Dividend Rate*" shall mean 5% of the Original Issue Price per annum for the Series 1 Preferred Stock and 8% of the Original Issue Price per annum for the Series 2 Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like, with respect to each such series of Preferred Stock).

1.6 "*Original Issue Date*" shall mean the date on which the first share of Series 2 Preferred Stock is issued by the Corporation.

1.7 "*Original Issue Price*" shall mean \$0.50 per share for the Series 1 Preferred Stock and \$.231 per share for the Series 2 Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like, with respect to each such series of Preferred Stock).

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

1.9 "*Preferred Stock*" shall mean the Series 1 Preferred Stock and the Series 2 Preferred Stock.

1.10 "*Series 1 Preferred Stock*" shall mean the Series 1 Preferred Stock, no par value, of the Corporation.

1.11 "*Series 2 Preferred Stock*" shall mean the Series 2 Preferred Stock, no par value, of the Corporation.

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

2. Dividend Rights.

2.1 Series 2 Preferred Stock. In each calendar year, the holders of the then outstanding Series 2 Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Corporation legally available therefor, noncumulative dividends at the annual Dividend Rate for the Series 2 Preferred Stock, prior and in preference to the payment of any dividends on the Series 1 Preferred Stock and Common Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Series 1 Preferred Stock and the Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Series 2 Preferred Stock shall have first been paid or declared and set apart for payment to the holders of the Series 2 Preferred Stock during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Dividends on the Series 2 Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Series 2 Preferred Stock by reason of the fact that the Corporation shall fail to declare or pay dividends on the Series 2 Preferred Stock in the amount of the annual Dividend Rate for the Series 2 Preferred Stock or in any other amount in any calendar year or any fiscal year of the Corporation, whether or not the earnings of the Corporation in any calendar year or fiscal year were sufficient to pay such

were sufficient to pay such dividends in whole or in part.

2.2 Series 1 Preferred Stock. Subject to the prior dividend rights of the Series 2 Preferred Stock set forth in Section 2.1, in each calendar year, the holders of the then outstanding Series 1 Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Corporation legally available therefor, noncumulative dividends at the annual Dividend Rate for the Series 1 Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Series 1 Preferred Stock shall have first been paid or declared and set apart for payment to the holders of the Series 1 Preferred Stock during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Dividends on the Series 1 Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Series 1 Preferred Stock by reason of the fact that the Corporation shall fail to declare or pay dividends on the Series 1 Preferred Stock in the amount of the annual Dividend Rate for the Series 1 Preferred Stock or in any other amount in any calendar year or any fiscal year of the Corporation, whether or not the earnings of the Corporation in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

2.3 Participation Rights. If, after dividends in the full preferential amounts specified in this Section 2 for the Series 2 Preferred Stock and Series 1 Preferred Stock have been paid or declared and set apart in any calendar year of the Corporation, the Board shall declare additional dividends out of funds legally available therefor in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Preferred Stock on a pari passu basis according to the number of shares of Common Stock held by such holders, where each holder of shares of Preferred Stock is to be treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Preferred Stock held by such holder pursuant to Section 5.

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

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

3.1 Series 2 Preferred Stock. The holders of each share of Series 2 Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Series 1 Preferred Stock or Common Stock, an amount per share equal to the Original Issue Price of the Series 2 Preferred Stock plus all declared but unpaid dividends on the Series 2 Preferred Stock. If upon any liquidation, dissolution or winding up of the Corporation, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series 2 Preferred Stock of their full preferential amount described in this subsection, then the entire Available Funds and Assets shall be distributed among the holders of the then outstanding Series 2 Preferred Stock pro rata,

according to the number of outstanding shares of Series 2 Preferred Stock held by each holder thereof.

3.2 Series 1 Preferred Stock. Subject to and after payment in full of the liquidation preference of the Series 2 Preferred Stock set forth above, the holders of each share of Series 1 Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to the Original Issue Price of the Series 1 Preferred Stock plus all declared but unpaid dividends on the Series 1 Preferred Stock. If upon any liquidation, dissolution or winding up of the Corporation, and after payment in full of the preferential amount specified for the Series 2 Preferred Stock in Section 3.1, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Series 1 Preferred Stock of their full preferential amount described in this subsection, then all of the remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Series 1 Preferred Stock pro rata, according to the number of outstanding shares of Series 1 Preferred Stock held by each holder thereof.

3.3 No Participation Rights. If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Preferred Stock of their full preferential amounts described above in this Section 3, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock pro rata according to the number of shares of Common Stock held by such holders.

3.4 Merger or Sale of Assets. Each of the following transactions (each a "Change of Control") shall be deemed to be a liquidation, dissolution or winding up of the Corporation as those terms are used in this Section 3: (i) any reorganization, consolidation, merger or similar transaction or series of related transactions (each, a "combination transaction") in which the Corporation is a constituent corporation or is a party if, as a result of such combination transaction, the voting securities of the Corporation that are outstanding immediately prior to the consummation of such combination transaction (other than any such securities that are held by an "Acquiring Stockholder", as defined below) do not represent, or are not converted into, securities of the surviving corporation of such combination transaction (or such surviving corporation's parent corporation if the surviving corporation is owned by the parent corporation) that, immediately after the consummation of such combination transaction, together possess at least a majority of the total voting power of all securities of such surviving corporation (or its parent corporation, if applicable) that are outstanding immediately after the consummation of such combination transaction, including securities of such surviving corporation (or its parent corporation, if applicable) that are held by the Acquiring Stockholder; or (ii) a sale of all or substantially all of the assets of the Corporation, that is followed by the distribution of the proceeds to the Corporation's stockholders. For the avoidance of doubt, the sale of shares of Series 2 Preferred Stock by the Corporation shall not be deemed to be a Change of Control. For purposes of this Section 3.4, an "Acquiring Stockholder" means a stockholder or stockholders of the Corporation that (i) merges or combines with the Corporation in such combination transaction or (ii) owns or controls a majority of another corporation that merges or combines with the Corporation in such combination transaction.

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

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

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

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

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

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

4. Voting Rights.

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

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

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

4.4 Board of Directors Election and Removal.

(a) Election of Directors. The Board shall be elected as follows: (i) so long as at least 1,000,000 shares of Series 2 Preferred Stock are outstanding (such number of shares being subject to proportional adjustments to reflect combinations or subdivisions of such Preferred Stock or dividends declared in shares of such stock), the holders of the Series 2 Preferred Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation; (ii) the holders of the Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation and (iii) the holders of the Preferred Stock and the Common Stock, voting together as a single class on an as-converted basis shall be entitled to elect any remaining directors of the Corporation.

(b) Quorum; Required Vote.

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

(ii) Required Vote. With respect to the election of any director or directors by the holders of the outstanding shares of a specified class of stock given the right to elect such director or directors pursuant to subsection 4.4(a) above (the "*Specified Stock*"), that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes (on an as-converted basis) of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the case of any such vote taken by written consent without a meeting, are elected by the written consent of the holders of a majority (on an as-converted basis) of the outstanding shares of such Specified Stock.

(c) Vacancy. If there shall be any vacancy in the office of a director elected or to be elected by the holders of any Specified Stock, then a director to hold office for the unexpired term of such directorship may be elected by the required vote of holders of the shares of such Specified Stock specified in subsection 4.4(b)(ii) above that are entitled to elect such director.

(d) Removal. Subject to Section 141(k) of the Delaware General Corporation Law, any director who shall have been elected to the Board by the holders of any Specified Stock, or by any director or directors elected by holders of any Specified Stock as provided in subsection 4.4(c), may be removed during his or her term of office, without cause, by, and only by, the affirmative vote of shares representing a majority of the voting power, on an as-converted basis, of all the outstanding shares of such Specified Stock entitled to vote, given either at a meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders without a meeting, and any vacancy created by such removal may be filled only in

filled only in the manner provided in subsection 4.4(c).

(e) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this subsection 4.4, shall be held in accordance with the procedures and provisions of the Corporation's Bylaws, the Delaware General Corporation Law and applicable law regarding stockholder meetings and stockholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

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

5.1 Optional Conversion.

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

(b) Each holder of Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Preferred Stock or Common Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Preferred Stock being converted. Thereupon the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If a conversion election under this subsection 5.1 is made in connection with an underwritten offering of the Corporation's securities pursuant to the Securities Act of 1933, as amended, (which underwritten offering does not cause an automatic conversion pursuant to subsection 5.2 to take place) the conversion may, at the option of the holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of the Corporation's securities pursuant to such offering, in which event the holders making such elections who are entitled to receive Common Stock upon conversion of their Preferred Stock shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such sale of the Corporation's securities in the offering.

5.2 Automatic Conversion.

(a) Each share of Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein: (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which the aggregate public offering price (before deduction of underwriters' discounts and commissions) equals or exceeds \$25,000,000; or (ii) upon the Corporation's receipt of the written consent of the holders of not less

than a majority of the then outstanding shares of Preferred Stock to the conversion of all then outstanding Preferred Stock under this Section 5 (voting as a single class on an as-converted basis).

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

5.3 Conversion Price. Each share of Preferred Stock shall be convertible in accordance with subsection 5.1 or subsection 5.2 above into the number of shares of Common Stock which results from dividing the Original Issue Price for such series of Preferred Stock by the conversion price for such series of Preferred Stock that is in effect at the time of conversion (the "Conversion Price"). The Conversion Price for the Series 1 Preferred Stock shall be \$0.3895 and the initial Conversion Price for the Series 2 Preferred Stock shall be the Original Issue Price of the Series 2 Preferred Stock. The Conversion Price of each such series of the Preferred Stock shall be subject to adjustment from time to time as provided below. Following each adjustment of the Conversion Price, such adjusted Conversion Price shall remain in effect until a further adjustment of such Conversion Price hereunder.

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

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

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

5.7 Reorganizations, Mergers and Consolidations. If at any time or from time to time after the Original Issue Date there is a reorganization of the Corporation (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 5) or a merger or consolidation of the Corporation with or into another corporation (except an event which is governed under subsection 3.4), then, as a part of such reorganization, merger or consolidation, provision shall be made so that the holders of the Preferred Stock thereafter shall be entitled to receive, upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Corporation, or of such successor corporation resulting from such reorganization, merger or consolidation, to which a holder of Common Stock deliverable upon conversion would have been entitled on such reorganization, merger or consolidation. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Preferred Stock after the reorganization, merger or consolidation to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable. This subsection 5.7 shall similarly apply to successive reorganizations, mergers and consolidations.

5.8 Sale of Shares Below Conversion Price.

(a) Adjustment Formula. If at any time or from time to time after the Original Issue Date of the Series 2 Preferred Stock the Corporation issues or sells, or is deemed by the provisions of this subsection 5.8 to have issued or sold, Additional Shares of Common Stock

Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in subsection 5.4, a dividend or distribution as provided in subsection 5.5, a recapitalization, reclassification or other change as provided in subsection 5.6 or a reorganization, merger or consolidation as provided in subsection 5.7, for an Effective Price (as hereinafter defined) that is less than the Conversion Price for the Series 2 Preferred Stock in effect immediately prior to such issue or sale (or deemed issue or sale), then, and in each such case, the Conversion Price for the Series 1 Preferred Stock and Series 2 Preferred Stock, respectively, shall be reduced, as of the close of business on the date of such issue or sale, to the price obtained by multiplying such Conversion Price by a fraction:

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

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

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

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

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

(B) up to 6,903,400 shares (the "*Pool*") of Common Stock (or options, warrants or rights therefor) granted or issued hereafter to employees, officers, directors, contractors, consultants or advisers to, the Corporation (or any subsidiary) pursuant to incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements that are approved by the Board (such number of shares to be calculated net of any repurchases of such shares by the Corporation and net of any such expired or terminated options, warrants or rights and to be proportionally adjusted to reflect any subsequent stock split, reverse stock split or recapitalization); provided that any issuances of securities pursuant to this subsection in excess of the Pool shall require the approval of at least two-thirds of the Board;

(C) shares of the Corporation's Common Stock or Preferred Stock (and/or options or warrants therefor) issued or issuable, other than primarily for equity financing purposes, to parties that are (i) actual or potential suppliers or customers, or strategic partners investing in connection with a commercial relationship with the Corporation or (ii) providing the Corporation with equipment leases, real property leases, loans, credit lines, guaranties of indebtedness, cash price reductions or similar transactions, under arrangements, in each case, approved by the Board;

(D) shares of Common Stock or Preferred Stock issued pursuant to the acquisition of another corporation or entity by the Corporation by consolidation, merger, purchase of all or substantially all of the assets, or other reorganization in which the Corporation acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or more of the equity ownership of such other entity or pursuant to the purchase of less than a fifty percent (50%) equity ownership in connection with a joint venture or other strategic arrangement or other commercial relationship; provided that such transaction or series of transactions has been approved by the Board;

(E) shares of Common Stock or Preferred Stock (i) issued upon the merger of Unity Semiconductor Corporation, a California corporation, with and into this Corporation and any securities issuable upon conversion thereof and (ii) issuable upon exercise of any options, warrants or rights to purchase any securities of the Corporation outstanding as of the date of this Restated Certificate of Incorporation and any securities issuable upon the conversion thereof;

(F) shares of Common Stock issued pursuant to a transaction described in Section 5.4 hereof;

(G) shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Preferred Stock will be converted to Common Stock; and

(H) any shares of Common Stock or Preferred Stock (or options, or warrants or rights to acquire same), issued or issuable hereafter that are (i) approved by the Board and (ii) approved by the vote of the holders of a majority of the Preferred Stock, voting together as a single class, as being excluded from the definition of "Additional Shares of Common Stock" under this subparagraph 5.8(b); and

(I) Common Stock issued or deemed issued pursuant to Section 5.8(c) as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of this Section 5.8.

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

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

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

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

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

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

(i) if the minimum amounts of such consideration cannot be ascertained, then the Deemed Issuance will occur when it can be ascertained;

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

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

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

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

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

5.10 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.

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

conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5.12 Notices. Any notice required by the provisions of this Certificate of Incorporation to be given to the holders of shares of the Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, or delivery by a recognized express courier, fees prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

5.13 No Impairment. The Corporation shall not, without the appropriate vote of the stockholders under the Delaware General Corporation Law or Section 6 of this Certificate of Incorporation, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

6. Restrictions and Limitations.

6.1 Protective Provisions. So long as 1,000,000 shares of Preferred Stock remain outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise), without the approval, by vote or written consent, of the holders of a majority of the Preferred Stock then outstanding, voting as a separate class on an as converted to Common Stock basis:

(1) amend its Certificate of Incorporation or Bylaws in any manner that would alter or change the rights, preferences, privileges or restrictions of the Preferred Stock;

(2) reclassify any outstanding shares of securities of the Corporation into shares having rights, preferences or privileges senior to or on a parity with the Preferred Stock;

(3) authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having rights or preferences senior to or being on a parity with the Preferred Stock as to dividend rights, liquidation or voting preferences;

(4) increase or decrease (other than by conversion or redemption) the total number of authorized shares of Preferred Stock;

(5) enter into a transaction constituting a Change of Control;

(6) liquidate or dissolve;

(7) declare or pay any dividends on or declare or make any other distribution, purchase, redemption or acquisition (other than Permitted Repurchases), directly or

indirectly, on account of any shares of Preferred Stock or Common Stock now or hereafter outstanding; or

(8) increase or decrease the authorized size of the Corporation's Board of Directors.

7. Miscellaneous.

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

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

ARTICLE VI

Except as otherwise provided herein, the Board of Directors of the corporation shall have the power to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE VII

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

Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate, reduce or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such amendment, repeal or adoption of such an inconsistent provision.

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which Delaware General Corporation Law permits this Corporation to provide indemnification) through Bylaw provisions, agreements with such 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 Delaware General Corporation Law, subject only to limits created by applicable Delaware General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this Corporation, its stockholders, and others.