

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT2944757

SUBMISSION TYPE:	CORRECTIVE ASSIGNMENT
NATURE OF CONVEYANCE:	Corrective Assignment to correct the STREET ADDRESS OF ASSIGNEE FROM 23230 CHAGRIN BLVD, COMMERCE PARK THREE, #950 TO 3333 RICHMOND ROAD, SUITE 420 previously recorded on Reel 033328 Frame 0934. Assignor(s) hereby confirms the CORRECTION OF TYPOGRAPHICAL ERROR.

CONVEYING PARTY DATA

Name	Execution Date
ETADIRECT HOLDINGS, INC.	05/19/2008

RECEIVING PARTY DATA

Name:	TOA TECHNOLOGIES, INC.
Street Address:	3333 RICHMOND ROAD, SUITE 420
City:	BEACHWOOD
State/Country:	OHIO
Postal Code:	44122-4196

PROPERTY NUMBERS Total: 1

Property Type	Number
Patent Number:	7693735

CORRESPONDENCE DATA

Fax Number: (949)567-6710

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

Phone: 9498527792

Email: ipprosecution@orrick.com

Correspondent Name: VICTOR SANTOS

Address Line 1: 2050 MAIN STREET, SUITE 1100

Address Line 4: IRVINE, CALIFORNIA 92614

ATTORNEY DOCKET NUMBER:	28652.1
NAME OF SUBMITTER:	VICTOR SANTOS
SIGNATURE:	/Victor Santos/
DATE SIGNED:	07/18/2014

Total Attachments: 39

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PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1

Stylesheet Version v1.2

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
CONVEYING PARTY DATA	
Name	Execution Date
ETADIRECT HOLDINGS, INC.	05/19/2008
RECEIVING PARTY DATA	
Name:	TOA TECHNOLOGIES, INC.
Street Address:	23230 CHAGRIN BOULEVARD
Internal Address:	COMMERCE PARK THREE, SUITE 950
City:	BEACHWOOD
State/Country:	OHIO
Postal Code:	44122
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	7693735
CORRESPONDENCE DATA	
Fax Number:	(949)567-6710
Phone:	949-567-6700
Email:	ipprosecution@orrick.com
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Correspondent Name:	ORRICK, HERRINGTON & SUTCLIFFE
Address Line 1:	2050 MAIN ST. SUITE 1100
Address Line 4:	IRVINE, CALIFORNIA 92614
NAME OF SUBMITTER:	DON DAYBELL
Signature:	/Don Daybell/

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REEL: 083359 FRAME: 0245

Date:

07/15/2014

Total Attachments: 36

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RECEIPT INFORMATION

EPAS ID: PAT2938464

Receipt Date: 07/15/2014

PATENT

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ETADIRECT HOLDINGS, INC.", CHANGING ITS NAME FROM "ETADIRECT HOLDINGS, INC." TO "TOA TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MAY, A.D. 2008, AT 1:06 O'CLOCK P.M.

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

3702680 8100

080565830

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 6600263

DATE: 05-19-08

PATENT
REEL: 033359 FRAME: 0247

FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ETADIRECT HOLDINGS, INC.

ETAdirect Holdings, Inc. a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

ONE: The name of this corporation is ETAdirect Holdings, Inc. and the date of filing of the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware was September 11, 2003 under the name ETAdirect, Inc. A Certificate of Amendment of this corporation was filed with the Secretary of State of Delaware on September 12, 2003, an Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on March 24, 2004, a Certificate of Amendment to Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on January 6, 2005, a Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 18, 2005, and a Third Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on April 9, 2008.

TWO: Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of Incorporation restates and integrates and further amends the provisions of the current Third Amended and Restated Certificate of Incorporation of the corporation.

THREE:

The text of the Third Amended and Restated Certificate of Incorporation as heretofore amended or supplemented is hereby amended and restated in its entirety to read as follows:

I.

The name of this corporation is TOA Technologies, Inc. (the "Corporation" or the "Company").

II.

The address of the registered office of the corporation in the State of Delaware is 1209 Orange Street, in the city of Wilmington, county of New Castle. The name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

III.

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

IV.

- A. Authorized Capital Stock. The aggregate number of shares, classes of shares and par value of shares which the Company shall have the authority to issue is 48,425,052 shares, consisting of (i) 30,000,000 shares of Common Stock, par value \$0.001 per share ("Common Stock"); and (ii) 18,425,052 shares of Preferred Stock, par value \$0.001 per share ("Preferred Stock"). Subject to the specific rights, preferences or privileges of any class of stock as set forth herein, the number of authorized shares of any such class or classes may be increased or decreased (but not below the number of shares of such class or classes then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation (voting together as a single class).
- B. Designated Preferred Stock. Three Million Eight Hundred Five Thousand (3,805,000) shares of Preferred Stock are hereby designated as Series A Convertible Preferred Shares ("Series A Preferred"), Six Million Six Hundred Seven Thousand Six Hundred Sixty (6,607,660) shares are hereby designated as Series B Convertible Preferred Shares (the "Series B Preferred") and Eight Million Twelve Thousand Three Hundred Ninety-Two (8,012,392) shares of Preferred Stock are hereby designated as Series C Convertible Preferred Shares ("Series C Preferred"). The express terms of the Preferred Stock are as follows:
- C. Common Stock Provisions.

1. Dividend Rights.

The holders of Common Stock are not entitled to receive any fixed or set dividend. The holders of Common Stock shall receive dividends only at such times and in such amounts as may be determined by the Board of Directors of the Company; provided however, that no such dividend shall be declared or paid unless all accrued and unpaid dividends on the Preferred Stock are simultaneously paid and the Preferred Stock receives an additional dividend equal in amount to the dividend per share being paid on the Common Stock on the basis that each share of Preferred Stock had been converted into Common Stock.

2. Voting Rights.

Except as otherwise required by law or expressly provided herein, the holder of each share of Common Stock shall have one vote per share on each matter submitted to a vote of the stockholders of the Company.

3. Liquidation Rights.

The rights of any holder of Common Stock in the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, shall be as set forth in Section D.4.

D. Preferred Stock Provisions.

1. Relative Ranking.

With respect to the payment of dividends, redemption and upon liquidation, dissolution or winding up of the Company, and otherwise as specified herein, shares of Series C Preferred shall rank senior (prior) to shares of Series B Preferred and shares of Series A Preferred, shares of Series B Preferred shall rank senior (prior) to shares of Series A Preferred, and all shares of Preferred Stock shall rank senior (prior) to shares of Common Stock.

2. Dividend Rights.

- (a) Dividends shall accrue on each share of Series C Preferred, commencing with the date of issuance thereof, at the rate of eight percent (8%) of the Original Series C Price (as defined below) per annum (subject to adjustment in the event of any stock split, combination or other similar event). The holders of the outstanding Series C Preferred shall be entitled to receive dividends on the Series C Preferred when and as declared by the unanimous consent of the Board of Directors of the Corporation (the "Board") out of funds legally available therefor. Dividends not declared shall nonetheless continue to cumulate, accrue and compound annually, and any and all such accrued dividends shall be automatically paid as provided in paragraphs 2, 4, 6 and 8 of this Section D. The "Original Series C Price" shall be \$1.6869095816 per share of Series C Preferred. In no event shall any dividend, whether in cash or other property, be declared or paid or set apart for payment, nor shall any other distribution be made, with respect to any other shares of capital stock of the Corporation (including, without limitation, shares of the Series A Preferred or Series B Preferred), nor shall any Common Stock or monies or other consideration be set aside for or applied to the purchase, redemption or retirement of any such shares (except for repurchases of Common Stock upon exercise of repurchase rights under the Corporation's Third Amended and Restated 2003 Incentive Plan, as may be amended and restated (the "Stock Option Plan"), and repurchases made in accordance with Section D.5(a)(ii) hereof), or made available for a sinking fund for such purpose unless all accrued dividends on the then outstanding Series C Preferred shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart.
- (b) Dividends shall accrue on each share of Series B Preferred, commencing with the date of issuance thereof, at the rate of eight percent (8%) of the Original Series B Price (as defined below) per annum (subject to adjustment in the event of any stock split, combination or other similar event). Subject to the preferential

rights of the Series C Preferred, the holders of the outstanding Series B Preferred shall be entitled to receive dividends on the Series B Preferred when and as declared by the unanimous consent of the Board out of funds legally available therefor. Dividends not declared shall nonetheless continue to cumulate, accrue and compound annually, and any and all such accrued dividends shall be automatically paid as provided in paragraphs 2, 4, 6 and 8 of this Section D. The "Original Series B Price" shall be \$0.6810281 per share of Series B Preferred. Subject to the preferential rights of the Series C Preferred, in no event shall any dividend, whether in cash or other property, be declared or paid or set apart for payment, nor shall any other distribution be made, with respect to any other shares of capital stock of the Corporation (including, without limitation, shares of the Series A Preferred), nor shall any Common Stock or monies or other consideration be set aside for or applied to the purchase, redemption or retirement of any such shares (except for repurchases of the Series C Preferred pursuant to this Certificate of Incorporation, repurchases of Common Stock upon exercise of repurchase rights under the Stock Option Plan, and repurchases made in accordance with Section D.5(a)(ii) hereof), or made available for a sinking fund for such purpose) unless all accrued dividends on the then outstanding Series B Preferred shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart.

- (c) Dividends shall accrue on each share of Series A Preferred, commencing with the date of issuance thereof, at the rate of six percent (6%) of the Original Series A Price (as defined below) per annum (subject to adjustment in the event of any stock split, combination or other similar event). Subject to the preferential rights of the Series C Preferred and the Series B Preferred, the holders of the outstanding Series A Preferred shall be entitled to receive dividends on the Series A Preferred when and as declared by the unanimous consent of the Board out of funds legally available therefor. Dividends not declared shall nonetheless continue to cumulate, accrue and compound annually, and any and all such accrued dividends shall be automatically paid as provided in paragraphs 2, 4, 6 and 8 of this Section D. The "Original Series A Price" shall be \$0.10 per share of Series A Preferred. Subject to the preferential rights of the Series C Preferred and the Series B Preferred, in no event shall any dividend, whether in cash or other property, be declared or paid or set apart for payment nor shall any other distribution be made, with respect to any other shares of capital stock of the Corporation, nor shall any Common Stock or monies or other consideration be set aside for or applied to the

purchase, redemption or retirement of any such shares (except for the repurchases of the Series C Preferred and Series B Preferred pursuant to this Certificate of Incorporation, repurchases of Common Stock upon exercise of repurchase rights under the Stock Option Plan, and repurchases made in accordance with Section D.5(a)(ii) hereof) or made available for a sinking fund for such purpose, unless all accrued dividends on the then outstanding Series A Preferred shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart.

- (d) In addition to the dividend rights of the Preferred Stock set forth in paragraphs (a), (b) and (c) above, the holders of record of Preferred Stock shall be entitled to participate *pari passu* with the holders of Common Stock in any and all dividends or other distributions declared on the Common Stock, based on the number of shares of Common Stock into which the Preferred Stock could be converted on the record date for such dividend or, if no record date is established, the date on which such dividend is declared. Any such dividend or other distributions shall be paid at the same time as payment is made with respect to the Common Stock.

3. Voting Rights.

Except as otherwise provided herein or as required by law, the Preferred Stock shall be voted equally as a single class with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Preferred Stock shall be entitled to such number of votes as shall be equal to the number of shares of Common Stock (including fractional shares) into which such holder's aggregate number of shares of Preferred Stock are convertible (pursuant to Section D.6 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

4. Liquidation Rights.

- (a) Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of the shares of Series C Preferred shall be entitled, before any distribution or payment or setting apart for payment of any amount is made upon any shares of Series B Preferred, Series A Preferred, Common Stock or any other capital stock of the Company, to be paid an amount equal to the Original Series C Price per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus, in the case of each share, an amount equal to any and all dividends accrued but unpaid thereon, computed

to the date payment thereof is made available (the "Series C Liquidation Preference").

- (b) If upon such liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the assets to be distributed among the holders of Series C Preferred shall be insufficient to permit payment to the holders of Series C Preferred of the full Series C Liquidation Preference in accordance with paragraph (a) above, then the entire assets of the Company to be so distributed shall be distributed ratably among the holders of Series C Preferred.
- (c) After full payment of the Series C Liquidation Preference has been made to the holders of the Series C Preferred, the holders of the shares of Series B Preferred shall be entitled, before any distribution or payment or setting apart for payment of any amount is made upon any shares of Series A Preferred, Common Stock or any other capital stock of the Company, to be paid an amount equal to the Original Series B Price per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus, in the case of each share, an amount equal to any and all dividends accrued but unpaid thereon, computed to the date payment thereof is made available (the "Series B Liquidation Preference").
- (d) If upon such liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the assets to be distributed among the holders of Series B Preferred shall be insufficient to permit payment to the holders of Series B Preferred of the full Series B Liquidation Preference in accordance with paragraph (c) above, then the entire assets of the Company to be so distributed shall be distributed ratably among the holders of Series B Preferred.
- (e) After full payment of the Series C Liquidation Preference has been made to the holders of the shares of Series C Preferred, and full payment of the Series B Liquidation Preference has been made to the holders of the Series B Preferred, the holders of the shares of Series A Preferred shall be entitled, before any distribution or payment or setting aside for payment of any amount is made upon any shares of Common Stock to be paid an amount equal to the Original Series A Price per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus, in the case of each share, an amount equal to any and all dividends accrued but unpaid thereon, computed to the date payment thereof is made available (the "Series A Liquidation Preference").

- (f) If upon such liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Preferred shall be insufficient to permit payment to the holders of Series A Preferred of the full Series A Liquidation Preference in accordance with paragraph (e) above, then the entire assets of the Company to be so distributed shall be distributed ratably among the holders of Series A Preferred.
- (g) After full payment of the Liquidation Preferences has been made to the holders of the Preferred Stock, the remaining assets of the Company shall be distributed to the holders of Preferred Stock and Common Stock ratably as if the Preferred Stock had been converted into Common Stock in accordance with Section D.6.
- (h) Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of any payments and the place where such payments shall be made, shall be given by mail, postage prepaid, or by international courier to non-United States residents, not less than 15 days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Company.
- (i) The following events shall be considered a liquidation, dissolution or winding up of the Company under this Section, unless the holders of at least sixty-six and two-thirds percent (66 2/3%) of the Series C Preferred and Series B Preferred, voting together as a single class, elect otherwise by written notice given to the Company at least 5 days prior to the effective date of any such event:
 - (i) Any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred, excluding any consolidation or merger elected exclusively to change the domicile of the Company (an "Acquisition"); or

- (ii) A sale, lease, transfer, license or other disposition, in a single transaction or series of related transactions, of all or substantially all of the assets of the Company (an "Asset Transfer").
- (j) In the event of such an Acquisition or Asset Transfer, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors (including at least one of the Series B/C Directors (as defined in Section E.4 below)). Any securities shall be valued as follows:
 - (i) Securities not subject to investment letter or other similar restrictions on free marketability covered by Section D.4(j)(ii) below:
 - (1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;
 - (2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and
 - (3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors (including at least one Series B/C Director).
 - (ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section D.4(f)(i) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors (including at least one Series B/C Director).
 - (iii) Notwithstanding the foregoing in this Section D.4(g), in the event the fair market value is set forth in the definitive agreement for the Acquisition or Asset Transfer, the fair market value for purposes of this

Section D.4 shall be determined in accordance therewith.

- (k) The Company shall not have the power to effect any transactions constituting an Acquisition or Asset Transfer unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Company shall be allocated among the holders of Capital Stock of the Company in accordance with Sections D.4(a) -- (g) hereof.

5. Restrictions.

- (a) So long as at least 3,475,006 shares of Preferred Stock (subject to appropriate adjustment in the event of any dividend, stock split, combination, or similar recapitalization affecting such shares) remain outstanding, without the approval of the holders of at least two-thirds of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

- (i) Amend, alter or repeal any provisions of its Certificate of Incorporation or Bylaws, including amending, altering or repealing any rights, preferences or privileges of the Preferred Stock, so as to adversely affect the rights, preferences or privileges of the Series B Preferred or Series C Preferred;
- (ii) Purchase or set aside any sums for the purchase of any shares of capital stock of the Company other than Preferred Stock in accordance with Section D.8 of this Certificate, except for the repurchase of shares of securities from former employees or consultants of the Company who acquired such shares directly from the Company, if each such purchase is made pursuant to contractual rights held by the Company relating to the termination of employment or services of such former employee or consultant;
- (iii) Declare or pay any dividend or make any distribution on any of the Company's securities, except for dividends with respect to the Preferred Stock in accordance with Section D.2 of this Certificate of Incorporation;

- (iv) Enter into, consent to, or agree to any liquidation, dissolution or winding up of the Company or any subsidiary, any merger, combination or acquisition, recapitalization or reclassification or Asset Transfer;
- (v) Create or authorize the creation of, or reclassify, any additional class or series of shares of stock unless the same ranks junior to the Series B Preferred and Series C Preferred as to dividends, redemption rights and the distribution of assets on the liquidation, dissolution or winding up of the Company, or increase the authorized number of the Preferred Stock or increase the authorized number of any additional class or series of shares of stock unless the same ranks junior to the Series B Preferred and Series C Preferred as to dividends, redemption rights and the distribution of assets on the liquidation, dissolution or winding up of the Company, or create or authorize, or reclassify, any obligation or security convertible into shares of Series C Preferred or Series B Preferred or into shares of any other class or series of stock unless the same ranks junior to the Series B Preferred and Series C Preferred as to dividends, redemption rights and the distribution of assets on the liquidation, dissolution or winding up of the Company, whether any such creation, reclassification, authorization or increase shall be by means of amendment to the Certificate of Incorporation, by an Acquisition, reclassification of stock or otherwise;
- (vi) Issue any shares of stock or other securities in any subsidiary of the Company;
- (vii) Increase or decrease the size of the Board of Directors to a number greater or lesser than five (5) directors;
- (viii) Adopt, amend or alter any equity incentive plan (or similar plan or arrangement), that has the result of increasing the number of securities available for options and grants to directors, officers, and employees of, or consultants to the Company in excess of 4,693,430 shares of Common Stock;

- (ix) Enter into any unrelated lines of business other than as outlined in the TOA Technologies Presentation to investors in the Series C Preferred dated April 2008;
- (x) Authorize, consent to, or agree to transfer or sell any of the Company's intellectual property rights;
- (xi) Authorize, consent to, or agree to the formation of any subsidiary or to any material acquisition, whether directly or indirectly, of any other company or business;
- (xii) Enter into any joint ventures or creation of any affiliate that is less than 50% owned by the Company, which joint venture or affiliate creation includes the sale, lease, transfer, exclusive license or other transfer by the Company to such joint venture or affiliate of substantially all of the Company's intellectual property, including but not limited to registered trademarks and patents; or
- (xiii) Borrow or otherwise authorize, issue or incur or materially modify the terms of, indebtedness by the Company (including, for this purpose, among other things, capital lease obligations, obligations with respect to sale and leaseback transactions, obligations for the deferred purchase price of property outside the ordinary course of business, guarantees, the assumption of any indebtedness of any other person and similar financial obligations) having an effective interest rate in excess of 5% over Prime Rate as published in The Wall Street Journal on the business date immediately preceding the date of such borrowing or indebtedness.

(b) Series C Preferred. For so long as at least 1,539,310 shares of Series C Preferred (subject to appropriate adjustment in the event of any dividend, stock split, combination, or similar recapitalization affecting such shares) remain outstanding, without the approval of the holders of a majority of the then outstanding shares of Series C Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

- (i) take any action that constitutes or results in amendment or waiver of any provision of the Company's Certificate of Incorporation or Bylaws if such

amendment or waiver materially and adversely affects any existing rights, preferences or privileges of the Series C Preferred; or

(ii) Increase or reduce the authorized number of shares of Series C Preferred (other than as a result of conversion in accordance with the terms of Section D.6 below).

(c) Series B Preferred. For so long as at least 1,174,700 shares of Series B Preferred (subject to appropriate adjustment in the event of any dividend, stock split, combination, or similar recapitalization affecting such shares) remain outstanding, without the approval of the holders of at least two-thirds of the then outstanding shares of Series B Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) take any action that constitutes or results in amendment or waiver of any provision of the Company's Certificate of Incorporation or Bylaws if such amendment or waiver materially and adversely affects any existing rights, preferences or privileges of the Series B Preferred; or

(ii) Increase or reduce the authorized number of shares of Series B Preferred (other than as a result of conversion in accordance with the terms of Section D.6 below).

(d) Series A Preferred. For so long as at least 761,000 shares of Series A Preferred (subject to appropriate adjustment in the event of any dividend, stock split, combination, or similar recapitalization affecting such shares) remain outstanding, without the approval of the holders of a majority of the then outstanding shares of Series A Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, and in addition to any other vote required by law or this Certificate of Incorporation, the Company will not:

(i) take any action that constitutes or results in amendment or waiver of any provision of the Company's Certificate of Incorporation or Bylaws if such amendment or waiver materially and adversely affects any existing rights, preferences or privileges of the Series A Preferred; or

(ii) Increase or reduce the authorized number of shares of Series A Preferred (other than as a result of conversion in accordance with the terms of Section D.6 below).

6. Conversion Rights.

The holders of the Preferred Stock shall have the following rights with respect to the conversion of the Preferred Stock into shares of Common Stock (the "Conversion Rights"):

- (a) Optional Conversion. Subject to and in compliance with the provisions of this Section D.6, any shares of Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the applicable "Conversion Rate" then in effect (determined as provided in Section D.6(b)) by the number of shares of Preferred Stock being converted.
- (b) Conversion Rate. The conversion rate (the "Conversion Rate") in effect at any time for conversion of the Series C Preferred shall be the quotient obtained by dividing the Original Series C Price by the "Series C Conversion Price," calculated as provided in Section D.6(c). The Conversion Rate in effect at any time for conversion of the Series B Preferred shall be the quotient obtained by dividing the Original Series B Price by the "Series B Conversion Price," calculated as provided in Section D.6(c). The Conversion Rate in effect at any time for conversion of the Series A Preferred shall be a quotient obtained by dividing the Original Series A Price by the "Series A Conversion Price," calculated as provided in Section D.6(c).
- (c) Conversion Price. The conversion price (the "Conversion Price") for the Series C Preferred shall initially be the Original Series C Price, the Conversion Price for the Series B Preferred shall initially be the Original Series B Price and the Conversion Price for the Series A Preferred shall initially be the Original Series A Price. Such initial Conversion Prices shall be adjusted from time to time in accordance with this Section D.6. All references to the Conversion Price herein shall mean the applicable Conversion Price as so adjusted.
- (d) Mechanics of Conversion. Each holder of Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section D.6 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Preferred Stock being converted. Thereupon, the Company 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 and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor or at the election of the holder, in Common Stock determined by dividing the value of

accumulated dividends by the fair market value of the Common Stock at the time of conversion determined in good faith by the Company's Board of Directors, any accrued and unpaid dividends on the shares of Preferred Stock being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Preferred Stock. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the 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.

- (e) Adjustment of Price Upon Issuance of Common Stock. Except as provided in Section D.6(f), if and whenever the Company shall issue or sell, or is, in accordance with Sections D.6(e)(i) through (vii), deemed to have issued or sold, any shares of Common Stock for a consideration per share (the "New Issuance Consideration") less than the Conversion Price for any of the Series A Preferred, Series B Preferred or Series C Preferred in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Conversion Price for such Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, which is greater than the New Issuance Consideration shall be reduced (unless such reduction has been waived in writing by the holders of at least a majority of the outstanding shares of the Series C Preferred with respect to the Series C Preferred, or the holders of at least two-thirds of the outstanding shares of the Series B Preferred with respect to the Series B Preferred or the holders of a majority of the outstanding shares of the Series A Preferred with respect to the Series A Preferred, as the case may be), to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) / (A + C)$$

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

- (1) "CP₂" means the applicable Conversion Price in effect immediately after such issue of additional shares of Common Stock;
- (2) "CP₁" means the applicable Conversion Price in effect immediately prior to such issue of additional shares of Common Stock;

- (3) "A" means the number of shares of Common Stock outstanding and deemed outstanding immediately prior to such issue of additional shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of vested Options outstanding immediately prior to such issue or upon conversion of Convertible Securities which by their terms are then convertible (including the Preferred Stock) outstanding immediately prior to such issue);
- (4) "B" means the number of shares of Common Stock that would have been issued if such additional shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and
- (5) "C" means the number of such additional shares of Common Stock issued in such transaction.

For purposes of this Section D.6(e), the following subsections e(i) to e(vii) shall also be applicable:

- (i) Issuance of Rights or Options. In case at any time the Company shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable (so long as the exercise price and number of shares is then fixed), and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (A) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus, in the case of such

Options which relate to Convertible Securities, the aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (B) the total number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price for any of the Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, in effect immediately prior to the time of the granting of such Options, then the total number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuances of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subsection D.6(e)(iii), no adjustment of the applicable Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities.

- (ii) Issuance of Convertible Securities. In case the Company shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (A) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible

Securities) shall be less than the Conversion Price for any of the Series A Preferred, Series B Preferred or Series C Preferred, as the case may be, in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (I) except as otherwise provided in subsection D.6(e)(iii), no adjustment of the applicable Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (II) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the applicable Conversion Price have been or are to be made pursuant to other provisions of this Section D.6(e), no further adjustment of the applicable Conversion Price shall be made by reason of such issue or sale.

- (ii) Change in Option Price or Conversion Rate; Expiration of Option and Termination of Right to Convert or Exchange Convertible Securities. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in subsection D.6(e)(i), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subsections D.6(e)(i) or (ii), or the rate at which Convertible Securities referred to in subsections D.6(e)(i) or (ii) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the applicable Conversion Price in effect at the time of such event shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time

initially granted, issued or sold; provided, however, that no such adjustment shall increase the applicable Conversion Price then in effect hereunder to a price which exceeds the lower of (i) the applicable Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuance of additional shares of Common Stock between the original adjustment date and such readjustment date. On the expiration of any Option or the termination of any right to convert or exchange such Convertible Securities, the applicable Conversion Price then in effect hereunder shall forthwith be increased (if previously adjusted pursuant to the terms of this subsection D.6(e)(iii)) to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

- (iv) Stock Dividends. In case the Company shall declare a dividend or make any other distribution upon any stock of the Company payable in Common Stock (except for dividends or distributions upon the Common Stock), Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.
- (v) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount actually received by the Company therefor (i.e., net of any expenses incurred or for any underwriting commissions or concessions paid or allowed by the corporation in connection therewith). In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Company (which approval shall include at least one Series B/C Director). In case any Options shall

be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Company (which approval shall include at least one Series B/C Director).

- (vi) Record Date. In case the Company shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be; provided, however, if such record date shall have been fixed and such dividend or other distribution is not issued or made or such rights of subscription or purchase are not granted on the date issued or made or such rights of subscription or purchase are not granted on the date fixed therefor, the adjustment previously made in the applicable Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the applicable Conversion Price shall be adjusted pursuant to this subsection D.6(e)(vi) as of the actual date of their issuance.
- (vii) Treasury Shares. The disposition of any shares of Common Stock owned or held by or for the account of the Company shall be considered an issue or sale of Common Stock for the purpose of this Section D.6(e).
- (f) Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Company shall not be required to make any adjustment of the Conversion Prices for the Preferred Stock in the case of (i) the issuance of up to an aggregate of

4,693,430 shares (appropriately adjusted to reflect the occurrence of any event or transaction described in Section D.6(g)), of Common Stock to directors, officers, employees and consultants of the Company in connection with their rendering of services to the Company, (ii) shares issued upon the conversion of shares of the Preferred Stock, (iii) any subdivision or combination affecting the Common Stock or the issuance of Common Stock pursuant to a stock dividend or other distribution on Common Stock if an appropriate adjustment to the Conversion Price is made pursuant to Section D.6(g), (iv) the conversion of any Convertible Securities outstanding as of the Original Issue Date (as defined below), and (v) the issuance of up to 250,000 shares (appropriately adjusted to reflect the occurrence of any event or transaction described in Section D.6(g)) of Common Stock issued or issuable to banks, equipment lessors pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Company; provided that any issuances under this subclause (v) do not exceed more than one percent (1%) of the Company's outstanding shares of capital stock (on an as-converted basis) in any twelve (12)-month period.

(g) Adjustment for Stock Splits and Combinations. If the Company shall at any time or from time to time after the date that the first share of Series C Preferred is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of any series of Preferred Stock, the applicable Conversion Price for such series of Preferred Stock in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of any series of Preferred Stock, the applicable Conversion Price for such series of Preferred Stock in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section D.6(g) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(h) 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 any series of 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 an Acquisition or Asset Transfer as defined in Section D.4(i) or a subdivision or combination of shares or stock dividend or a reorganization, merger,

consolidation or sale of assets provided for elsewhere in this Section D.6), in any such event each holder of such 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 maximum 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.

(i) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section D.4(i) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section D.6), as a part of such capital reorganization, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section D.6 with respect to the rights of the holders of the Preferred Stock after the capital reorganization to the end that the provisions of this Section D.6 (including adjustment of the applicable Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(j) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Preferred Stock, the Company, at its expense, shall 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 Preferred Stock at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any additional shares of Common Stock issued or sold

or deemed to have been issued or sold, (ii) the applicable Conversion Price at the time in effect, (iii) the number of additional shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Preferred Stock.

(k) Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section D.4(i)) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section D.4(i)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of the Preferred Stock at least ten (10) days prior to the record date specified therein (or such shorter period approved by the holders of at least two-thirds of the outstanding Preferred Stock voting together as a single class) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(l) Automatic Conversion.

(i) Each share of Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective applicable Conversion Price, (A) at any time upon the affirmative election of the holders of at least two-thirds of the outstanding shares of Preferred Stock, voting together as a single class, or (B) immediately upon the closing of the first firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company at a price equal to or greater than five (5) times the

Original Series C Price (as adjusted in accordance with this Certificate of Incorporation) with gross proceeds to the Company of at least \$35 million ("Qualified Public Offering"). Upon such automatic conversion pursuant to a Qualified Public Offering, any accrued but unpaid dividends shall be paid in accordance with the provisions of Section D.6(d).

- (ii) Upon the occurrence of an event triggering automatic conversion as set forth in Section D.6(l)(i), the outstanding shares of the Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company 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 Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred 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, and any accrued and unpaid dividends shall be paid in accordance with the provisions of Section D.6(d).

- (m) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of the 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 any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

- (n) Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock. 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 Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.
- (o) Notices. Any notice required by the provisions of this Section D.6 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.
- (p) Payment of Taxes. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered.
- (q) No Impairment. Without the consent of the applicable holders of the then outstanding Preferred Stock, as required under Section D.5, the Company shall not amend its Certificate of Incorporation or

participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, 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.

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.

8. Redemption of Shares of Preferred Stock.

(a) Series A Preferred.

(1) Holder's Right to Redeem. Subject to a written notice to the Corporation signed by the holders of at least a majority of the outstanding shares of Series A Preferred (the "Series A Redemption Notice"), subject to the written consent of the holders of at least two-thirds of the Series B Preferred and Series C Preferred, voting together as a single class, and subject to the Company's obligations set forth in Sections D.8(b) and (c) below, the Company shall redeem on May 19, 2012 (the "First Redemption Date") and on each of the first and second anniversaries thereof (each such date, together with the First Redemption Date, a "Redemption Date"), out of funds legally available therefor, that number of shares of Series A Preferred determined by dividing (x) the total number of shares of Series A Preferred outstanding immediately prior to the Redemption Date by (y) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). The Corporation shall effect such redemption by paying in cash a price per share equal to the Series A Redemption Price (as hereinafter defined).

(2) Series A Redemption Price and Payment. For the purposes of this Section D.8(a), the Series A Redemption Price shall be the Original Series A Price, plus, in the case of each share, all accrued but unpaid dividends, computed to the applicable Redemption Date. The Series A Preferred to be redeemed on a particular Redemption Date shall be redeemed with funds legally available, subject to the prior payment or

set-aside of payment of the Series B Redemption Price for the Series B Preferred to be redeemed on such Redemption Date and the Series C Redemption Price for the Series C Preferred to be redeemed on such Redemption Date. Subject to the prior rights of the Series B Preferred and Series C Preferred pursuant to this Section D.8, the Series A Redemption Price shall be payable in cash no later than thirty (30) days after the applicable Redemption Date.

(b) Series B Preferred.

- (1) Holder's Right to Redeem. Subject to a written notice to the Corporation signed by the holders of at least two-thirds of the outstanding shares of Series B Preferred (the "Series B Redemption Notice"), subject to the written consent of the holders of at least a majority of the Series C Preferred, voting as a separate class, and subject to the Company's obligations set forth in Section D.8(c) below, the Company shall redeem on the First Redemption Date and each subsequent Redemption Date, that number of shares of Series B Preferred determined by dividing (x) the total number of shares of Series B Preferred outstanding immediately prior to the Redemption Date by (y) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). The Corporation shall effect such redemption by paying in cash a price per share equal to the Series B Redemption Price (as hereinafter defined).

- (2) Series B Redemption Price and Payment. For the purposes of this Section D.8(b), the Series B Redemption Price shall be the greater of (i) the Original Series B Price, plus, in the case of each share, all accrued but unpaid dividends, computed to the applicable Redemption Date, or (ii) the Fair Market Value of the Series B Preferred computed as of the First Redemption Date. For the purposes hereof, Fair Market Value shall be determined in good faith by a majority of the disinterested members of the Board of Directors with the approval of the holders of at least two-thirds of the shares of Series B Preferred and Series C Preferred, voting together as a single class; provided that, if such approval cannot be obtained within 15 days following the First Redemption Date then the Fair Market Value shall be determined by an independent valuation ("Independent Valuation") assuming the outright sale of 100% of the outstanding securities of the Company to an arm's-length buyer. The Independent Valuation, if necessary, will be performed by an

investment bank or appraiser mutually agreeable to the Company and the holders of at least two-thirds of the Series B Preferred and Series C Preferred, voting together as a single class. If an investment bank or appraiser cannot be selected in the foregoing manner, then the Company and the holders of at least two-thirds of the Series B Preferred and Series C Preferred, voting together as a single class, shall each select an investment bank or appraiser. Such investment bank(s) and/or appraiser(s), in turn, shall then select a mutually agreeable investment bank or appraiser for the purposes of the Independent Valuation. The Company on the one hand, and the holders of the Series B Preferred and Series C Preferred on the other hand, shall share equally the cost of the Independent Valuation. The Independent Valuation shall not contain any reductions in the valuation of the Series B Preferred attributable to minority interest or lack of liquidity. Subject to the determination of the Series B Redemption Price, and subject to the prior rights of the Series C Preferred pursuant to this Section D.8, the Series B Redemption Price shall be payable in cash no later than thirty (30) days after the applicable Redemption Date. The Series B Preferred to be redeemed on a particular Redemption Date shall be redeemed in full before the Company pays or sets aside payment of the Series A Redemption Price for the Series A Preferred to be redeemed on such Redemption Date.

(c) Series C Preferred.

- (1) Holders' Right to Redeem. Subject to a written notice to the Corporation signed by the holders of at least a majority of the outstanding shares of Series C Preferred (the "Series C Redemption Notice"), the Company shall redeem on the First Redemption Date and each subsequent Redemption Date, that number of shares of Series C Preferred determined by dividing (x) the total number of shares of Series C Preferred outstanding immediately prior to the Redemption Date by (y) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). The Corporation shall effect such redemption by paying in cash a price per share equal to the Series C Redemption Price (as hereinafter defined).
- (2) Series C Redemption Price and Payment. For the purposes of this Section D.8(c), the Series C Redemption Price shall be the greater of (i) the Original Series C Price, plus, in the

case of each share, all accrued but unpaid dividends, computed to the applicable Redemption Date, or (ii) the Fair Market Value of the Series C Preferred computed as of the First Redemption Date. For the purposes hereof, the Fair Market Value of the Series C Preferred shall be determined in the manner described in Section D.8(b)(2) above. Any Independent Valuation shall not contain any reductions in the valuation of the Series C Preferred attributable to minority interest or lack of liquidity. Subject to the determination of the Series C Redemption Price, the Series C Redemption Price shall be payable in cash no later than thirty (30) days after the applicable Redemption Date. The Series C Preferred to be redeemed on a particular Redemption Date shall be redeemed in full before the Company pays or sets aside payment of the Series A Redemption Price for the Series A Preferred to be redeemed on such Redemption Date, or payment of the Series B Redemption Price for the Series B Preferred to be redeemed on such Redemption Date.

- (d) Redemption Mechanics. Subject to the receipt by the Company of the Series A Redemption Notice and/or the Series B Redemption Notice and/or the Series C Redemption Notice, as applicable, at least ten (10) but not more than sixty (60) days prior to the First Redemption Date, written notice (the "Redemption Notice") shall be given by the Company by mail, postage prepaid, or by international courier to non-U.S. residents, to each holder of record (at the close of business on the business day next preceding the day on which the Redemption Notice is given) of shares of Series A Preferred and/or Series B Preferred and/or Series C Preferred, as the case may be, notifying such holder of the redemption and specifying the number of shares being redeemed, the redemption price, the Redemption Dates and the place where the redemption price shall be payable. The Redemption Notice shall be addressed to each holder at the address shown by the records of the Company. From and after the close of business on each Redemption Date, unless there shall have been a default in the payment of the redemption price, all rights of holders of shares of Preferred Stock being redeemed (except the right to receive the redemption price) shall cease with respect to such shares so redeemed, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein. Subject to the first priority payments to the holders of the Series C Preferred, and the second

priority payments to the holders of the Series B Preferred, if the funds of the Company legally available for the payment of the applicable Redemption Price on any date when payment is due are insufficient to pay the full applicable Redemption Price, the holders of shares of Preferred Stock who are owed payment shall share ratably in any funds legally available for payment according to the respective amounts which would be payable to them if payment on such date were made in full. If the Company does not have enough cash to pay the full installment of the Series B Redemption Price and/or Series C Redemption Price due, the Company shall pay such installment of the Series B Redemption Price and/or Series C Redemption Price, as the case may be, by issuing an 8% secured note (the "Note") payable not later than twelve (12) months from the applicable Redemption Date; provided that any Note for the installment of the Series B Redemption Price shall be subordinate to any Note for the installment of the Series C Redemption Price. The terms of the Note must be approved by the holders holding at least two-thirds of the then outstanding Series B Preferred and Series C Preferred, voting together as a single class. If the Company fails to pay the Series B Redemption Price and/or Series C Redemption Price when payment is due then the Board of Directors shall be reconstituted such that, the holders of the Series C Preferred and the Series B Preferred shall elect three (3) directors voting together as a single class, and the holders of the Common Stock and Series A Preferred holders shall elect two (2) directors, voting together as a single class; provided that any series of Preferred Stock that has been fully redeemed shall not be entitled to elect members to the Board of Directors.

- (e) Redeemed or Otherwise Acquired Shares To Be Retired. Any shares of Preferred Stock redeemed pursuant to this Section D.8 or otherwise acquired by the Company in any manner whatsoever shall be cancelled and shall not under any circumstances be reissued; and the Company may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Preferred Stock.
- (f) Termination. The right of redemption under this Section D.8 shall terminate on the closing of a Qualified Public Offering.

9. Preemptive Rights.

- (a) Each holder of Series C Preferred, each holder of Series B Preferred, and each holder of Series A Preferred whose shares represent at least 1% of the then outstanding shares of capital stock (collectively, a "Preferred Stockholder") shall have the preemptive right to

purchase from the Company a pro rata portion of an offering of any equity security or any security which is or may become convertible or exchangeable into an equity security of the Company whether now authorized or not, and rights, options or warrants to purchase equity securities or capital stock and securities of any type whatsoever that are, or may become convertible into or exchangeable for equity securities or capital stock, when issued or sold by the Company, on the best terms and conditions as said securities are offered to other purchasers thereof; provided, however, that there will be no such preemptive right in the case of:

- (i) up to 4,693,430 shares of Common Stock or options convertible into Common Stock issued to employees, officers, directors or consultants rendering services to the Company pursuant to any stock offering, plan or arrangement approved by the Board of Directors of the Company;
- (ii) securities issued for the purposes of acquiring another entity (whether by stock purchase, merger, asset purchase or otherwise) or for the purpose of a strategic partnership, approved by the Board of Directors, provided, however, that such Board of Directors' approval must include the consent of at least two of the Series B/C Directors;
- (iii) securities issued to the public pursuant to a Qualified Public Offering;
- (iv) shares of Common Stock or Preferred Stock issued as a stock dividend to holders of Common Stock or Preferred Stock or upon any subdivision or combination of shares of Common Stock or Preferred Stock;
- (v) shares of Common Stock issued pursuant to the exercise or conversion of any Convertible Securities outstanding as of the Original Issue Date.
- (vi) up to 250,000 shares of capital stock issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financing or similar transactions approved by the Board of Directors; or

(vii) shares of Common Stock issued upon the conversion of the Preferred Stock.

- (b) The Company shall give the Preferred Stockholders fifteen (15) days' written notice (the "Notice Period") of any proposed security issuance which would give rise to preemptive rights as contemplated in this Section D.9. Each Preferred Stockholder wishing to purchase securities shall have the right to purchase that portion of the securities which is determined by a fraction, the numerator of which is the number of shares of Common Stock held by such Preferred Stockholder, and the denominator of which is the number of shares of Common Stock held by all Preferred Stockholders (assuming for purposes of the calculation the exercise and conversion into Common Stock of all securities of the Company held by each Preferred Stockholder). Each Preferred Stockholder shall have a further pro rata right (a "right of over-allotment") to purchase the securities refused by any Preferred Stockholder who declines to fully exercise its preemptive right. Each Preferred Stockholder desiring to exercise its preemptive right must notify the Company in writing prior to the close of business on the last day of the Notice Period, stating (i) its intent to purchase, (ii) whether or not it intends to exercise its right of over-allotment, and (iii) the maximum number of securities it is willing to purchase.
- (c) In the event any Preferred Stockholder fails to exercise in full its preemptive right (after giving effect to the over-allotment provisions hereof), the Company shall have one hundred and twenty (120) days thereafter to sell the securities with respect to which the Preferred Stockholder's option was not exercised, at a price and upon terms no more favorable to the purchasers thereof than specified in the Company's notice. To the extent the Company does not sell all the securities so offered within said one hundred and twenty (120)-day period, the Company shall not thereafter issue or sell any such securities without first offering such securities to the Preferred Stockholders in the manner provided herein.
- (d) The preemptive rights set forth in this Section D.9 shall terminate and be of no further force or effect upon a Qualified Public Offering.

10. Waivers.

- (a) Unless specifically stated otherwise, any rights or other powers of the Common Stock, the Series A Preferred or the Series C Preferred, as the case may be, may be waived by a written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Common Stock, Series A Preferred or Series

C Preferred, as the case may be, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class.

- (b) Unless specifically stated otherwise, any rights or other powers of the Series B Preferred may be waived by a written consent or affirmative vote of the holders of at least two-thirds of the then outstanding shares of Series B Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class.

E. Election of Directors.

1. Directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Each director shall hold office either until the expiration of the term for which elected or appointed and until a successor has been elected and qualified, or until such director's death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.
2. No person entitled to vote at an election for directors may cumulate votes to which such person is entitled.
3. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide. The number of directors constituting the Board shall be initially set at five (5) and shall only be increased or decreased in accordance with the Bylaws and the provisions of this Certificate of Incorporation.
4. Subject to the last sentence in Section D.8(d), the holders of the Series B Preferred, voting as a separate class, shall be entitled to elect two (2) directors of the Company (the "Series B Directors") and the holders of the Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Company. The holders of two-thirds of the Series C Preferred, voting as a separate class, shall be entitled to elect one (1) director of the Company (the "Series C Director"); provided that for so long as two-thirds of the holders of Series C Preferred decline or fail to elect the Series C Director, the holders of the Series A Preferred, voting as a separate class, shall be entitled to elect one (1) director of the Company. As used in this Certificate of Incorporation, a "Series B/C Director" means any Series B Director or the Series C Director, if elected.
5. A vacancy in a directorship elected by holders of the Series C Preferred, voting as a separate class, shall be filled only by vote or written consent of the holders of two-thirds of the Series C Preferred. A vacancy in a directorship elected by holders of the Series B Preferred, voting as a

separate class, shall be filled only by vote or written consent of the holders of the Series B Preferred. A vacancy in a directorship elected by holders of the Series A Preferred, voting as a separate class, shall be filled only by vote or written consent of the holders of the Series A Preferred. A vacancy in a directorship elected by holders of Common Stock, voting as a separate class, shall be filled only by vote or written consent of the holders of the Common Stock, voting as a separate class.

6. The provisions of this Section E are subject to the terms of the Second Amended and Restated Stockholders' Agreement, dated as of May 19, 2008, as may be amended from time to time (the "Stockholders Agreement").

F. Removal.

The Board of Directors or any director may be removed from office at any time pursuant to the terms of the Company's Bylaws and the Stockholders' Agreement.

V.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation, and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that

- A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws, subject to the other provisions of the Certificate of Incorporation.
- B. Subject to the terms of this Certificate of Incorporation, the Bylaws may be altered or amended or new Bylaws adopted by the stockholders entitled to vote. Subject to the terms of this Certificate of Incorporation, the Board of Directors shall also have the power to adopt, amend or repeal Bylaws.
- C. Subject to any applicable requirements of law, the books of the Corporation may be kept outside the state of Delaware at such locations as may be designated by the Board of Directors or in the Bylaws of the Corporation.

VI.

- A. The Corporation shall indemnify each person who at any time is, or shall have been, a director or officer of the Corporation and was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including

attorneys' fees), judgments, fines and amounts paid in settlement incurred in connection with any such action, suit or proceeding, to the maximum extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended. In furtherance of and not in limitation of the foregoing, the Corporation shall advance expenses, including attorneys' fees, incurred by an officer or director of the Corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such advances if it shall be ultimately determined that he is not entitled to be indemnified by the Corporation. The foregoing right of indemnification shall in no way be exclusive of any other rights of indemnification to which any such director or officer may be entitled, under any Bylaw, agreement, vote of directors or stockholders or otherwise. No amendment to or repeal of the provisions of this Article VI shall deprive a director or officer of the benefit hereof with respect to any act or failure to act occurring prior to such amendment or repeal.

- B. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.
- C. No director of the Corporation shall be personally liable to the Corporation or to any of its stockholders for monetary damages arising out of such director's breach of his fiduciary duty as a director of the Corporation, except to the extent that the elimination or limitation of such liability is not permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended. No amendment to or repeal of the provisions of this Article VI shall deprive any director of the Corporation of the benefit hereof with respect to any act or failure to act of such director occurring prior to such amendment or repeal.

VII.

Subject to the other provisions of this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

FIVE: This Restated Certificate of Incorporation, which amends and restates the prior Certificate of Incorporation of the Corporation, has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the Board of Directors and the stockholders of the Corporation.

IN WITNESS WHEREOF, this Certificate has been executed this 19th day of May, 2008 by the undersigned who affirms that the statements made herein are true and correct.

/s/ Yuval Brisker

Name: Yuval Brisker

Title: President