

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT3479086

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME
CONVEYING PARTY DATA	
Name	Execution Date
TARAL NETWORKS, INC.	08/23/2004
RECEIVING PARTY DATA	
Name:	AIRWIDE SOLUTIONS INC.
Street Address:	20 BURLINGTON MALL RD
City:	BURLINGTON
State/Country:	MASSACHUSETTS
Postal Code:	01803
PROPERTY NUMBERS Total: 2	
Property Type	Number
Patent Number:	7649895
Patent Number:	7039037
CORRESPONDENCE DATA	
Fax Number:	(480)422-9701
<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>	
Phone:	4809619000
Email:	MICHELLE.WHITTINGTON@MITEL.COM
Correspondent Name:	MICHELLE WHITTINGTON
Address Line 1:	1146 N ALMA SCHOOL ROAD
Address Line 2:	BLD B
Address Line 4:	MESA, ARIZONA 85201
ATTORNEY DOCKET NUMBER:	M001 & M013
NAME OF SUBMITTER:	MICHELLE WHITTINGTON
SIGNATURE:	/michellewhittington/
DATE SIGNED:	08/11/2015
Total Attachments: 31	
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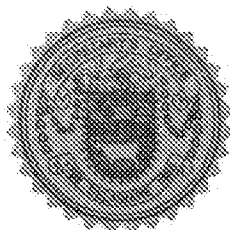
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "TARAL NETWORKS, INC.", CHANGING ITS NAME FROM "TARAL NETWORKS, INC." TO "AIRWIDE SOLUTIONS INC.", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF AUGUST, A.D. 2004, AT 8:19 O'CLOCK P.M.

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3291167 8100

AUTHENTICATION: 3311394

040616059

DATE: 08-23-04

PATENT
REEL: 036332 FRAME: 0730

**FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
TARAL NETWORKS, INC.**

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

1. The name of the Corporation is Taral Networks, Inc. (the "Corporation").
2. The Corporation filed, with the Secretary of State of the State of Delaware, its original Certificate of Incorporation on September 29, 2000, an Amended and Restated Certificate of Incorporation on November 9, 2000, a Second Amended and Restated Certificate of Incorporation on October 25, 2001 and a Third Amended and Restated Certificate of Incorporation on July 19, 2004 (the "Current Certificate of Incorporation").
3. This Fourth Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") amends, restates and integrates the provisions of the Current Certificate of Incorporation and was duly adopted by the board of directors and stockholders of the Corporation (the "Board of Directors") in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.
4. The text of the Current Certificate of Incorporation is hereby amended and restated in its entirety to provide as follows:

**ARTICLE I
NAME**

The name of the Corporation is airwide solutions inc.

**ARTICLE II
REGISTERED OFFICE**

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400 in the City of Wilmington, County of New Castle 19808. The name of its registered agent at such address is the Corporation Service Company.

**ARTICLE III
PURPOSES**

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as the same may be amended and supplemented from time to time (the "DGCL").

ARTICLE IV
CAPITAL SECURITIES

Effective immediately upon the filing of this Fourth Amended and Restated Certificate of Incorporation (the "Effective Time"), a one-for-sixty-two reverse stock split of the Corporation's Common Stock (as defined below) and Series C Preferred Stock (as defined below) shall become effective, pursuant to which (i) each sixty-two (62) shares of Common Stock issued and outstanding immediately prior to the Effective Time shall be reclassified as and combined into one (1) validly issued, fully paid and nonassessable share of Common Stock and (ii) each sixty-two (62) shares of Series C Preferred Stock issued and outstanding immediately prior to the Effective Time shall be reclassified as and combined into one (1) validly issued, fully paid and nonassessable share of Series C Preferred Stock, in each case having such rights, preferences and limitations as set forth in this Fourth Amended and Restated Certificate of Incorporation. In lieu of any fractional share to which the stockholder would otherwise be entitled as a result of reclassifying all of such stockholder's shares in the aggregate as provided above, the Corporation shall pay cash equal to such fraction multiplied by the then fair value of the Common Stock, and/or Series C Preferred Stock, as applicable, as determined by the Board of Directors of the Corporation.

The total number of shares of capital stock that the Corporation shall have authority to issue is 67,174,984 shares, consisting of two separate classes of capital stock divided and designated as follows: (i) 45,000,000 shares of Common Stock ("Common Stock"), each having a par value of \$.001 per share; and (ii) 22,174,984 shares of Preferred Stock ("Preferred Stock"), each having a par value of \$.001 per share, 20,115,984 shares of which Preferred Stock shall be designated as Series C Convertible Participating Preferred Stock ("Series C Preferred Stock") and 2,059,000 shares of which shall be designated as Series CC Junior Non-Voting Preferred Stock (the "Junior Preferred Stock").

Except as otherwise restricted by this Certificate of Incorporation, the Corporation is authorized to issue from time to time all or any portion of the capital stock of the Corporation that is authorized but not issued to such person or persons and for such lawful consideration as it may deem appropriate, and generally in its absolute discretion to determine the terms and manner of any disposition of such authorized but unissued capital stock.

Any and all such shares issued for which the full consideration has been paid or delivered shall be deemed fully paid shares of capital stock, and the holder of such shares shall not be liable for any further call or assessment or any other payment thereon.

The voting powers, designations, preferences, privileges and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions of each class (and series) of capital stock of the Corporation are as hereafter provided in this Article FOURTH.

A. PREFERRED STOCK

1. Dividends.

- (a) The holders of shares of Series C Preferred Stock, in preference to the holders of all Junior Securities, shall be entitled to receive, out of funds legally available for the purpose, cumulative dividends as provided in this Section A.1. Cumulative dividends on each share of Series C Preferred Stock shall be payable in cash and shall accrue at the per annum rate of eight percent (8%) on the sum of (i) the Series C Purchase Price and (ii) all accumulated and unpaid dividends accrued thereon pursuant to this Section A.1(a) from the date of issuance thereof (the "Series C Preferred Dividends" and, the sum of the Series C Preferred Dividends and the Series C Purchase Price is referred to herein as the "Series C Liquidation Preference"). Series C Preferred Dividends shall be calculated and compounded annually in arrears on July 20, 2004 of each year, prorated on a daily basis for partial periods. Series C Preferred Dividends shall commence to accrue on each share of Series C Preferred Stock from the date of issuance thereof and continue to accrue thereafter until such share of Series C Preferred Stock is no longer outstanding, whether or not such dividends are declared by the Board of Directors and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued with respect to the Series C Preferred Stock, such payment shall be distributed ratably among the holders of Series C Preferred Stock based upon the aggregate accrued but unpaid dividends on the Series C Preferred Stock held by each holder.
- (b) The holders of Series C Preferred Stock shall, in addition to the Series C Preferred Dividends, participate in all dividends and other distributions (other than stock dividends in the nature of a stock split or the like and repurchases of securities by the Corporation not made on a *pro rata* basis from all holders of any class of the Corporation's Capital Securities) that are declared and paid on Common Stock on the same basis as if each share of Series C Preferred Stock had been converted into Common Stock in accordance with Section A.3 immediately prior to the record date established for such dividends.
- (c) Without the consent of the Requisite Series C Stockholders, so long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not declare, pay or set apart for payment any dividends or make any other distribution on or redeem any Junior Securities (other than stock dividends and distributions in the nature of a stock split or the like) and will not permit any Subsidiary to redeem, purchase or otherwise acquire for value, or set apart for any sinking or other analogous fund for the redemption or purchase of, any Junior Securities.
- (d) All numbers relating to the calculation of dividends pursuant to this Section A.1 shall be equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Series C Preferred Stock or Common Stock.
- (e) The Junior Preferred Stock shall not accrue any dividends.

2. Liquidation Preference.

(a) Liquidation Event.

(i) Upon (A) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (B) a Sale of the Corporation or (C) a reorganization of the Corporation required by any court or administrative body in order to comply with any provision of law (each of the events referred to in clauses (A), (B) and (C) being referred to as a "Liquidation Event"), each holder of Series C Preferred Stock shall be entitled, after provision for the payment of the Corporation's debts and other liabilities and in preference to, and, before any amount or property shall be paid or distributed on account of any Junior Securities, to be paid in full with respect to each share of Series C Preferred Stock out of the assets of the Corporation available for distribution to stockholders, which assets shall be cash to the extent thereof, and thereafter, to the extent thereof, securities traded on a national securities exchange or nationally recognized interdealer quotation system, securities traded over-the-counter or securities with no active public market (as determined in accordance with Section A.2(d) below), an amount equal to the Series C Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Series C Preferred Stock is insufficient to permit the payment of the Series C Liquidation Preference of each share of Series C Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Series C Preferred Stock ratably in proportion to the relative Series C Liquidation Preferences of the Series C Preferred Stock held by such holders, and the holders of Common Stock, Junior Preferred Stock and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof.

(ii) Upon a Liquidation Event, each holder of Junior Preferred Stock shall be entitled, after provision for the payment of the Corporation's debts and other liabilities, and after payment is made to the holders of Series C Preferred Stock pursuant to subsection (i) above, but prior and in preference to any distribution made on any Common Stock or other Junior Securities, to be paid in full with respect to each share of Junior Preferred Stock out of the assets of the Corporation available for distribution to stockholders, which assets shall be cash to the extent thereof, and thereafter, to the extent thereof, securities traded on a national securities exchange or nationally recognized interdealer quotation system, securities traded over-the-counter or securities with no active public market (as determined in accordance with Section A.2(d) below), an amount per share equal to the Junior Preferred Liquidation Preference. If upon any Liquidation Event the amount available for distribution among the holders of all outstanding Junior Preferred Stock after payment is made to the holders of Series C Preferred Stock pursuant to subsection (i) above is insufficient to permit the payment of the Junior Preferred Liquidation Preference of each share of Junior Preferred Stock in full, then the amount available for distribution shall be distributed among the holders of the Junior Preferred Stock ratably in proportion to the relative Junior Preferred Liquidation Preferences of the Junior Preferred Stock held by such holders, and the holders of Common Stock and of any other Junior Securities shall in no event be entitled to participate in the distribution of any assets of the Corporation in respect of their ownership thereof.

(iii) Upon any Liquidation Event, after the holders of Series C Preferred Stock and Junior Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Preferred Stock as provided above in this Section A.2(a), the remaining net assets of the Corporation shall be distributed ratably among the holders of Series C Preferred Stock and Common Stock (with each share of Series C Preferred Stock being deemed for such purpose to equal the number of shares of Common Stock, including fractions thereof, into which such share of Series C Preferred Stock is convertible in accordance with the provisions of Section A.3 hereof).

(b) Consolidation, Merger, etc. Notwithstanding Section A.2(a), neither a Sale of the Corporation nor any reorganization of the Corporation of the type referenced in clause (i) of Section A.2(a) shall be deemed to be a Liquidation Event for the purposes of this Section A.2 if the Requisite Series C Stockholders waive in writing the provisions of this Section A.2 with respect to such event.

(c) No Effect on Conversion Rights. The provisions of this Section A.2 shall not in any way limit the right of the holders of Series C Preferred Stock to elect to convert their shares of Series C Preferred Stock into shares of Common Stock in accordance with Section A.3 hereof prior to or in connection with any Liquidation Event.

(d) Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of Preferred Stock upon any Liquidation Event in accordance with the terms hereof shall be valued as follows:

(i) If the consideration consists of cash or cash equivalents, then the value shall be computed at the aggregate amount of the cash or cash equivalents so delivered;

(ii) The per share value of securities traded on a national securities exchange or a nationally recognized interdealer quotation system shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) Business Days prior to the closing of such Liquidation Event;

(iii) The per share value of securities traded over-the-counter shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) Business Days prior to the closing of such Liquidation Event; and

(iv) For all other consideration, the value shall be the fair market value thereof as determined by the Board of Directors, including a majority of the Series C Director Designees. If the Board of Directors, including a majority of the Series C Director Designees, fails to agree on the fair market value thereof prior to the closing of a Liquidation Event, then the Valuation Procedures shall apply.

3. Conversion into Common Stock. The holders of Series C Preferred Stock shall have the following conversion rights (and for the avoidance of doubt, the Junior Preferred Stock shall not be convertible):

(a) Voluntary Conversion. At any time, each holder of Series C Preferred Stock shall be entitled, without the payment of any additional consideration, to cause all or any portion of the

shares of Series C Preferred Stock held by such holder to be converted into a number of shares of Common Stock determined as hereafter provided in this Section A.3(a), which shares shall upon the issuance thereof be fully paid and non-assessable. The number of shares of Common Stock issuable upon the conversion of the Series C Preferred Stock shall be determined on the basis of the ratio that results from dividing, for each share of Series C Preferred Stock, (i) the Series C Purchase Price by (ii) the Conversion Price (as defined below) of the Series C Preferred Stock, both as in effect at the time of conversion. As of the Effective Time, the "Conversion Price" per share of the Series C Preferred Stock equals the Series C Purchase Price. The number of shares of Common Stock into which shares of Series C Preferred Stock are convertible and the Conversion Price are subject to adjustment from time to time as hereafter provided.

(b) Automatic Conversion. Each share of Series C Preferred Stock shall automatically be converted, without the payment of any additional consideration, into the number of shares of Common Stock provided for in Section A.3(a) immediately upon the earlier of (i) the consummation of the Corporation's first underwritten Public Offering (A) resulting in at least \$40,000,000 of proceeds to the Corporation, net of underwriting discounts and commissions and offering expenses and (B) reflecting a gross offering price per share of Common Stock derived from a pre-money valuation of the Corporation (prior to the Public Offering) of not less than \$175,000,000 (a "Qualified Public Offering") or (ii) the written election of the Requisite Series C Stockholders (together with a Qualified Public Offering, an "Automatic Conversion Event").

(c) Procedure for Voluntary Conversion: Effective Date. Upon the election to convert the Series C Preferred Stock made in accordance with Section A.3(a), the holders of the Series C Preferred Stock making such election shall provide written notice of such conversion (the "Voluntary Conversion Notice") to the Corporation setting forth the number of shares of Series C Preferred Stock each such holder elects to convert into Common Stock (the "Elected Preferred Stock"). On the date the Voluntary Conversion Notice is delivered to the Corporation, such shares of Elected Preferred Stock shall thereupon be converted, without further action, into the number of shares of Common Stock provided for in Section A.3(a), and such number of shares of Common Stock into which the Elected Preferred Stock is converted shall thereupon be deemed to have been issued to such holders of the Elected Preferred Stock. Such holders shall as soon as practicable thereafter surrender to the Corporation at the Corporation's principal executive office the certificate or certificates evidencing the Elected Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to the holder so surrendering such certificates or to such holder's designee, at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Elected Preferred Stock shall have been converted. The issuance of certificates for shares of Common Stock upon conversion of Elected Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such stock. Notwithstanding anything to the contrary set forth in this Section A.3(c), in the event that the holders of shares of Series C Preferred Stock elect to convert such shares pursuant to Section A.3(a) in connection with any Liquidation Event, Public Offering or other specified event, (i) such conversion may at the election of such holders be conditioned upon the consummation of such Liquidation Event, Public Offering or the occurrence of such other

specified event, in which case, such conversion shall not be deemed to be effective until the consummation of such Liquidation Event, Public Offering or the occurrence of such other specified event and (ii) if such Liquidation Event, Public Offering or other specified event is consummated or occurs, all shares of Elected Preferred Stock shall be deemed to have been converted into shares of Common Stock immediately prior thereto.

(d) Procedure for Automatic Conversion. In the event of an Automatic Conversion Event, all outstanding shares of Series C Preferred Stock shall be converted automatically, without further action, into the number of shares of Common Stock provided for in Section A.3(b), and such number of shares of Common Stock into which the Series C Preferred Stock is converted shall be deemed to have been issued to the holders of Series C Preferred Stock. Such holders shall as soon as practicable thereafter surrender the certificate or certificates evidencing the Series C Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or an Affidavit of Loss with respect thereto. Upon surrender of such certificates or delivery of an Affidavit of Loss with respect thereto, the Corporation shall issue and deliver to such holder so surrendering such certificates or to such holder's designee, promptly (and in any event in such time as is sufficient to enable such holder to participate in such Qualified Public Offering) at an address designated by such holder, certificates for the number of shares of Common Stock into which such holder's Series C Preferred Stock shall have been converted.

(e) Fractional Shares; Partial Conversion. No fractional shares shall be issued upon conversion of any shares of Series C Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of Series C Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If any fractional interest in a share of Common Stock would, except for the provisions of the first sentence of this paragraph (e), be delivered upon any such conversion, the Corporation, in lieu of delivering the fractional share thereof, shall pay to the holder surrendering the Series C Preferred Stock for conversion an amount in cash equal to the current fair market value of such fractional interest as determined in good faith by the Board of Directors of the Corporation. In case the number of shares of Series C Preferred Stock represented by the certificate or certificates surrendered for conversion exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series C Preferred Stock represented by the certificate or certificates surrendered that are not to be converted.

4. Adjustments.

(a) Adjustments for Subdivisions, Combinations or Consolidation of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividends or otherwise, into a greater number of shares of Common Stock, the Conversion Price then in effect with respect to Series C Preferred Stock shall, concurrently with the effectiveness of such subdivision, be proportionately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Series C Preferred Stock shall be increased in proportion to such increase in outstanding shares. In the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of

shares of Common Stock, the Conversion Price then in effect with respect to each series of each class of Preferred Stock shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased so that the number of shares of Common Stock issuable on conversion of any shares of Series C Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(b) Adjustments for Reclassification, Exchange and Substitution. If the Common Stock issuable upon conversion of the Series C Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock or into any other securities or property, whether by capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction (other than a subdivision or combination of shares provided for above), each share of Series C Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such share of Series C Preferred Stock shall have been entitled upon such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction if immediately prior to such capital reorganization, reclassification, merger, combination of shares, recapitalization, consolidation, business combination or other similar transaction such holder had converted such holder's Series C Preferred Stock into Common Stock. The provisions of this Section A.4(b) shall similarly apply to successive capital reorganizations, reclassifications, mergers, combinations of shares, recapitalizations, consolidations, business combinations or other transactions. The Corporation shall not effect any Sale of the Corporation that is not, in accordance with Section A.2(b), a Liquidation Event unless prior to or simultaneously with the consummation thereof the successor Corporation or purchaser, as the case may be, shall assume by written instrument the obligation to deliver to the holders of Series C Preferred Stock such shares of stock, securities or assets as, in accordance with the foregoing provisions, each such holder is entitled to receive.

(c) Adjustment of the Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Effective Time issue or sell, or in accordance with Section A.4(e) is deemed to have issued or sold, any shares of Common Stock or Convertible Securities without consideration or for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issue or sale, then and in such event, such Conversion Price shall be reduced, concurrently with such issue or sale, to a price (calculated to the nearest one hundredth of one cent) determined by dividing, (A) the sum of (1) the product derived by multiplying (x) the Conversion Price in effect immediately prior to such issue or sale times (y) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the consideration, if any, received or receivable by the Corporation on account of such issue or sale; by (B) the sum of (1) number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale plus (2) the number of shares of Common Stock so issued or sold or, in accordance with Section A.4(e), is deemed to have been issued or sold.

(d) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 120 days, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to

all such issuances as if they occurred on the date of the final such issuance (and without giving effect to any adjustments as a result of such prior issuances within such period).

(e) Effect of Certain Events on Conversion Prices. For purposes of determining the adjusted Conversion Price with respect to Series C Preferred Stock under Section A.4(c), the following shall be applicable:

(i) Issuance of Convertible Securities. If the Corporation in any manner grants, issues or sells any Convertible Securities, whether or not the rights to exercise, convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such exercise, conversion or exchange is less than the Conversion Price in effect immediately prior to the time of such grant, issue or sale, then the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the grant, issue or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (x) the total amount received or receivable by the Corporation as consideration for the grant, issue or sale of such Convertible Securities, plus the cumulative minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof and, if applicable, the exercise, conversion and exchange of any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for (in each case, as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration), by (y) the total maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of all such Convertible Securities (as set forth in the instruments and agreements relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number). No further adjustment of the Conversion Price shall be made when Common Stock and, if applicable, any other Convertible Securities, are actually issued upon the exercise, conversion or exchange of such Convertible Securities.

(ii) Change in Exercise Price or Conversion Rate. If the additional consideration payable to the Corporation upon the exercise, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock should change at any time, the Conversion Price that is in effect at the time of such change that was adjusted in accordance with Section A.4(e)(i) upon the issuance of such Convertible Securities shall be readjusted to the Conversion Price that would have been in effect at such time had such Convertible Securities that are still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time such Convertible Securities were initially granted, issued or sold; and on the termination date of any right to exercise, convert or exchange such Convertible Securities without such right having been exercised, the Conversion Price then in effect hereunder shall be adjusted to the Conversion Price that would have been in effect at the time of such termination had such Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(iii) Exceptions for Excluded Securities. Notwithstanding the foregoing, no adjustments shall be made under Section A.4(c) and (e) with respect to the issue of any Excluded Securities.

(iv) Valuation of Non-Cash Consideration. The consideration received by the Corporation for the issue of any shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for shall be computed as follows:

(A) Insofar as such consideration consists of cash, such consideration shall equal the aggregate amount of cash paid or payable to the Corporation prior to amounts paid or payable for accrued interest or accrued dividends and prior to any commissions or expenses paid by the Corporation;

(B) Insofar as such consideration consists of property other than cash, such consideration shall be calculated at the fair value thereof as determined by the Board of Directors, including a majority of the Series C Director Designees. If the Board of Directors, including a majority of the Series C Director Designees, fails to agree on the fair value thereof prior to the receipt by the Corporation of such consideration, then the Valuation Procedures shall apply.

(C) In the event shares of Common Stock, Convertible Securities or any other Convertible Securities that such Convertible Securities may be converted into or exercised or exchanged for are issued together with other securities or other assets of the Corporation for consideration that is allocable to both such Common Stock and Convertible Securities, and to such other securities and assets, the portion of such consideration allocable to such Common Stock or Convertible Securities shall be that set forth in the instruments and agreements issued or entered into in connection with such transaction, and if no such allocation is so set forth, then the portion of such consideration allocable to such Common Stock or Convertible Securities, calculated as provided in clauses (A) and (B) above shall be based on their relative fair market values as determined by the Board of Directors, including a majority of the Series C Director Designees. If the Board of Directors, including a majority of the Series C Director Designees, fails to agree on the fair value thereof prior to the receipt by the Corporation of such consideration, then the Valuation Procedures shall apply.

(f) No Impairment. The Corporation will not, by amendment of its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, and will at all times in good faith assist in the carrying out of all the provisions of this Section A.4 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series C Preferred Stock hereunder against impairment by the Corporation or any successor entities.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section A.4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series C Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based and the Conversion Price then in effect. The Corporation shall, upon the written request at any time by any holder of Series C Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion

Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of such holder's Series C Preferred Stock.

(h) Rounding. All calculations under this Section A.4 shall be made to (i) the nearest one hundredth of one cent or (ii) the nearest one hundredth of a share or (iii) the nearest one hundredth of one percent, as the case may be.

(i) Series C Preferred Stock Special Mandatory Conversion.

(i) If (A) the Corporation shall issue or sell, or is, in accordance with Section A.4(e), deemed to have issued or sold, any shares of Common Stock or Convertible Securities (other than Excluded Securities) (such issuance being referred to herein as a "Dilutive Issuance"), (B) a holder of Preferred Stock ("Series C Preferred Holder") has the right and opportunity, pursuant to Section 3.3 of the Stockholders' Agreement, to purchase such Series C Preferred Holder's *pro rata* share (calculated pursuant to Section 3.3 of the Stockholders' Agreement of such Dilutive Issuance (without giving effect to any rights to purchase the *pro rata* shares of other holders of Series C Preferred Stock who do not subscribe for their full *pro rata* shares) and such preemptive rights have not been waived in accordance with Section 3.3(g) of the Stockholders' Agreement, and (C) such Series C Preferred Holder does not purchase such Series C Preferred Holder's full *pro rata* share of such Dilutive Issuance (other than as a result of the failure of the Corporation to comply with the terms of Section 3.3 of the Stockholders' Agreement, or the waiver of the preemptive rights granted by Section 3.3 of the Stockholders' Agreement in accordance with Section 3.3(g) of the Stockholders' Agreement) (such holder being referred to herein as a "Non-Participating Holder"), then effective as of the closing of such Dilutive Issuance, a number of shares of Series C Preferred Stock held by such Non-Participating Holder shall automatically be converted, at the then effective Conversion Price, into shares of Common Stock (such conversion shall be referred to herein as a "Special Mandatory Conversion"), such number of shares of Series C Preferred Stock to be determined by multiplying the number of shares of Series C Preferred Stock held by such Non-Participating Holder by (x) 1 minus (y) a fraction, the numerator of which is the number of shares of Common Stock or Convertible Securities purchased by such Non-Participating Holder as part of the Dilutive Issuance and the denominator of which is the number of shares of Common Stock or Convertible Securities which such Non-Participating Holder could have purchased based on its *pro rata* share determined in accordance with Section 3.3 of the Stockholder's Agreement.

(ii) Notwithstanding the foregoing, the terms of this Section A.4(i) shall not apply to a Dilutive Issuance if the preemptive rights of the holders of Series C Preferred Stock under Section 3.3 of the Stockholders' Agreement with respect to such Dilutive Issuance are waived in accordance with the terms of Section 3.3(g) of the Stockholders' Agreement. In determining whether a Series C Preferred Holder has purchased its *pro rata* share of a Dilutive Issuance for purposes of this Section A.4(i), any portion of a Dilutive Issuance purchased by an Affiliate of a Series C Preferred Holder shall be deemed to have been purchased by such holder.

(iii) All Non-Participating Holders shall be given written notice of the Special Mandatory Conversion and the place designated for mandatory conversion of shares of Series C Preferred Stock pursuant to this Section A.4(i). Such notice shall be sent by first class or registered mail,

postage prepaid, to each Non-Participating Holder, at such holder's address last shown on the records of the transfer agent for the Series C Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each Non-Participating Holder shall surrender his or its certificate or certificates for all such shares of Series C Preferred Stock to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section A.4(i). On the effective date of the Special Mandatory Conversion, all rights with respect to the Series C Preferred Stock so converted will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which the Series C Preferred Stock have been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the effective date of the Special Mandatory Conversion and the surrender of the certificate or certificates for Series C Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof. All certificates evidencing shares of Series C Preferred Stock that are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the effective date of the Special Mandatory Conversion, be deemed to have been retired and cancelled and the shares of Series C Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. Such converted Series C Preferred Stock may not be reissued, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series C Preferred Stock accordingly.

5. **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 issued or issuable shares of Series C Preferred Stock, such number of its shares of Common Stock, as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series C Preferred Stock, the Corporation will take all such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

6. **No Closing of Transfer Books.** The Corporation shall not close its books against the transfer of shares of Series C Preferred Stock in any manner that would interfere with the timely conversion of any shares of Series C Preferred Stock in accordance with the provisions hereof.

7. **Listing on Securities Exchanges, etc.** The Corporation will list on each national securities exchange and NASDAQ on which any Common Stock may at any time be listed, subject to official notice of issuance upon the conversion of the Series C Preferred Stock, all shares of Common Stock from time to time issuable upon the conversion of Series C Preferred Stock pursuant to this Certificate of Incorporation and will maintain such listing as long as any Common Stock is listed.

8. Notice.

(a) Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any Liquidation Event or (ii) any Liquidation Event is approved by the Board of Directors or the Corporation enters into any agreement with respect thereto, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Preferred Stock at least ten (10) days prior to such record date specified therein or the expected effective date of any such transaction, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event is expected to become effective and, in the case of a Sale of the Corporation, the identity of the parties thereto, and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

(b) Waiver of Notice. The Requisite Series C Stockholders may at any time upon written notice to the Corporation waive, either prospectively or retrospectively, any notice provisions specified herein, and any such waiver shall be effective as to all holders of Preferred Stock.

(c) General. In the event that the Corporation provides any notice, report or statement to all holders of Common Stock, the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Series C Preferred Stock.

9. 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 canceled, retired and eliminated from the shares that the Corporation shall be authorized to issue.

10. Redemption.

(a) All shares of Series C Preferred Stock may be redeemed in whole at the option of the Requisite Series C Stockholders on or after the Maturity Date (an "Optional Redemption"). In any such case, the Requisite Series C Stockholders shall notify the Corporation in writing (the "Redemption Notice") of their election to exercise the rights afforded by this Section A.10. Upon receipt of the Redemption Notice, the Corporation shall promptly notify the remaining holders of the Series C Preferred Stock thereof. The redemption price for each share of Series C Preferred Stock shall be cash in an amount (the "Redemption Price") equal to the sum of (i) the Series C Liquidation Preference with respect to a share of Series C Preferred Stock on the date the redemption is completed and (ii) the Fair Market Value of a share of Common Stock into which a share of Series C Preferred Stock is convertible as of the date of the Redemption Notice with respect thereto (the "Determination Date"), determined as provided below. The Redemption Price shall be due and payable on or before the ninetieth (90th) day following the giving of the Redemption Notice.

(b) The "Fair Market Value" of a share of Common Stock into which shares of Series C Preferred Stock are convertible means the total consideration that would be received by a holder

of one share of such Common Stock upon the sale of all of the Corporation's issued and outstanding capital stock and Convertible Securities in a single transaction or series of related transactions to a buyer in which the buyer is under no compulsion to buy and the holders of such capital stock and Convertible Securities are under no compulsion to sell, all parties having reasonable knowledge of all relevant facts, with no minority interest discount or lack of liquidity discount being applied and no other discount being applied for any other reason. Such Fair Market Value shall be that which is negotiated by the Corporation and the holders of a majority of the shares of Series C Preferred Stock (the "Requisite Percentage Holders"). If the Corporation and the Requisite Percentage Holders fail to agree on the Fair Market Value within thirty (30) days of the Determination Date, then the procedures set forth in the remainder of this Section A.10(b) shall apply (the "Valuation Procedures"). The Corporation and the Requisite Percentage Holders shall attempt to agree upon an appraiser to determine the Fair Market Value (the firm or firms engaged to determine the Fair Market Value hereunder being referred to as an "Appraiser"). If, within the ten (10) day period after the expiration of such thirty (30) day period, the Corporation and the Requisite Percentage Holders agree upon an Appraiser to determine the Fair Market Value, then such Appraiser shall make such determination within thirty (30) days of the date of such Appraiser's engagement, and such determination shall govern. All elections of the Appraiser shall be rendered in writing and shall be signed by the Appraiser. If the Corporation and the Requisite Percentage Holders do not, within such ten (10) day period, agree as to an Appraiser, or if the Appraiser appointed as provided above fails to determine such Fair Market Value within thirty (30) days of the date of such Appraiser's engagement, then the Board of Directors shall appoint an independent committee to determine the Fair Market Value in accordance with this Section 10(b), and barring bad faith or fraud, such determination shall be conclusive. The Fair Market Value determined as herein provided shall be conclusive, final and binding on the parties and shall be enforceable in any court having jurisdiction over a proceeding brought to seek such enforcement. The cost of the Fair Market Value determination shall not be taken into account in determining Fair Market Value and shall be borne by the Corporation.

(c) If the funds of the Corporation legally available for redemption of shares of Series C Preferred Stock are insufficient to redeem the total number of outstanding shares of Series C Preferred Stock entitled to redemption, the holders of shares of Series C Preferred Stock entitled to redemption shall share ratably in any funds legally available for redemption of such shares according to the respective amounts that would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series C Preferred Stock, such funds will be used at the earliest permissible time to redeem the balance of such shares, or such portion thereof for which funds are then legally available. The Corporation shall be obligated to use its best efforts, to the extent approved by a majority of the members of the Board of Directors, to take such actions as may be necessary (including, without limitation, the issuance of additional equity securities, the revaluation or recapitalization of the Corporation or the consummation of Sale of the Corporation) in order to permit the full and timely redemption of the shares of Series C Preferred Stock entitled to redemption. Without limitation of the foregoing, if the Corporation fails to fully and timely redeem the shares of Series C Preferred Stock entitled to redemption hereunder, the Requisite Series C Stockholders shall have the right to exercise their right to effect a Sale of the Corporation under Section 3.4 of the Stockholders' Agreement; provided, however, that without

limitation of the rights of any holders of Series C Preferred Stock to sell their shares of the Company's Capital Securities and/or Convertible Securities, the Corporation shall not be obligated to consummate the Sale of the Corporation unless such Sale of the Corporation is on terms acceptable to and approved by a majority of the members of the Board of Directors.

(d) Until the holders of Series C Preferred Stock who have exercised redemption rights hereunder have received in cash all amounts provided in this Section A.10, the Series C Preferred Stock being redeemed shall not be considered redeemed. Such unredeemed shares shall remain outstanding and shall continue to have all rights and preferences (including, without limitation, dividend, conversion and voting rights) provided for herein; *provided, however*, that (i) the rate of dividends accruing on the Series C Preferred Stock for purposes of Section 1 hereof shall increase to 15% per annum and shall be payable quarterly in arrears; and (ii) the holders of such unredeemed shares shall have the ongoing right to be redeemed, together with such rights and remedies as may be available under applicable law, at each such holder's election either (A) to have such holder's remaining outstanding shares of Series C Preferred Stock redeemed, or (B) rescind the Redemption Notice with respect to all of such unredeemed shares and to continue holding such shares, free of any right of the Corporation to redeem such shares. If a holder of Series C Preferred Stock so elects to rescind the Redemption Notice with respect to Series C Preferred Stock, the rate of dividends arising thereon shall not be deemed to have increased as provided in clause (i) of this subsection (d).

(e) The notices provided for in Section A.10(a) through (d) shall be sent, if by or on behalf of the Corporation, to the holders of the Series C Preferred Stock at their respective addresses as shall then appear on the records of the Corporation, or if by any holder of Series C Preferred Stock to the Corporation, at its principal executive office or registered office in Delaware, by first class mail, postage prepaid, (i) notifying such recipient of the redemption, the date of such redemption, the number of shares of Series C Preferred Stock to be redeemed, and the redemption price therefor and (ii) in the case of any notice by or on behalf of the Corporation, stating the place or places at which the shares called for redemption shall, upon presentation and surrender of such certificates representing such shares, be redeemed.

(f) Junior Preferred Redemption Event.

(i) The Junior Preferred Stock shall be redeemed in whole upon the earlier of (A) the consummation of a Qualified Public Offering and (B) July 19, 2010 (each a "Junior Preferred Redemption Event"). Subject to the priority right of the Series C Preferred Stock to receive the Series C Liquidation Preference in a Sale of the Corporation that is treated as a Liquidation Event pursuant to Section A.2(a) above, upon any Junior Preferred Redemption Event, the holders of Junior Preferred Stock shall be entitled to receive a redemption price for each share of Junior Preferred Stock in cash in an amount equal to the Junior Preferred Liquidation Preference. The Junior Preferred Liquidation Preference shall be due and payable on or before the tenth (10th) day following the consummation of the Junior Preferred Redemption Event. Notwithstanding the foregoing, in the event of a Qualified Public Offering that is a Junior Preferred Redemption Event, each holder of Junior Preferred Stock may, to the extent permitted by applicable law, elect to receive, by written notice to the Corporation on or before the fifth (5th) Business Day after consummation of a Qualified Public Offering, in lieu of cash in respect of the Junior Preferred Liquidation Preference, a number of shares of Common Stock determined by

dividing the Junior Preferred Liquidation Preference by the average daily trading price of the Common Stock during the three (3) Business Days immediately following the consummation of a Qualified Public Offering.

(ii) If the funds of the Corporation legally available for redemption of shares of Junior Preferred Stock are insufficient to redeem the total number of outstanding shares of Junior Preferred Stock entitled to redemption, the holders of shares of Junior Preferred Stock entitled to redemption shall share ratably in any funds legally available for redemption of such shares according to the respective amounts that would be payable with respect to the full number of shares owned by them if all such outstanding shares were redeemed in full. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Junior Preferred Stock, such funds will be used at the earliest permissible time to redeem the balance of such shares, or such portion thereof for which funds are then legally available.

(iii) Until the holders of Junior Preferred Stock who have redemption rights hereunder have received in cash all amounts provided in this Section A.10(f), the Junior Preferred Stock being redeemed shall not be considered redeemed. Such unredeemed shares shall remain outstanding and shall continue to have all rights and preferences provided for herein.

(iv) The notices provided for in this Section A.10(f) shall be sent, if by or on behalf of the Corporation, to the holders of the Junior Preferred Stock at their respective addresses as shall then appear on the records of the Corporation, or if by any holder of Junior Preferred Stock to the Corporation, at its principal executive office or registered office in Delaware, by first class mail, postage prepaid, (i) notifying such recipient of the redemption, the date of such redemption, the number of shares of Junior Preferred Stock to be redeemed, and the redemption price therefor and (ii) in the case of any notice by or on behalf of the Corporation, stating the place or places at which the shares called for redemption shall, upon presentation and surrender of such certificates representing such shares, be redeemed.

11. **Voting Generally.** The holder of each share of Series C Preferred Stock shall vote with holders of Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders. For such purpose, except as provided in Section A.13, each holder of Series C Preferred Stock shall be entitled to the number of votes per share of Series C Preferred Stock as equals the largest number of shares of Common Stock into which each share of Series C Preferred Stock may be converted pursuant to Section A.3 on the record date fixed for the determination of stockholders entitled to vote or on the effective date of any written consent of stockholders, as applicable. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula with respect to any holder of Series C Preferred Stock shall be rounded to the nearest whole number (with one-half rounded upward to one). There shall be no cumulative voting. The Junior Preferred Stock shall not be entitled to vote, except as otherwise required by the DGCL or as set forth in Section A.13(b) below.

12. **Board of Directors.** The Corporation's board of directors (the "Board of Directors") shall consist of five (5) individuals designated pursuant to the Stockholders' Agreement, unless the Requisite Series C Stockholders, voting separately as a single class for such purposes, shall otherwise consent. The holders of Series C Preferred Stock, voting separately as a single class

for such purpose, shall be entitled to elect three (3) directors of the Corporation (such three (3) directors being referred to as the "Series C Director Designees"). The election of the Series C Director Designees by the holders of the Series C Preferred Stock shall occur in accordance with the Stockholders' Agreement (i) at the annual meeting of stockholders, (ii) at any special meeting of stockholders or (iii) by written consent. A Series C Director Designee may be removed at any time with or without cause by and only in accordance with the Stockholders' Agreement, and any vacancy occurring by reason of such removal or by reason of the death, resignation or inability to serve of any such director, shall be filled by and only by a vote or written consent in accordance with the Stockholders' Agreement. Any Series C Director Designee so elected shall serve until such Series C Director Designee's successor is duly elected and qualified, or such Series C Director Designee's earlier death, resignation or removal by the person or persons with the right to remove such Series C Director Designee in accordance with the Stockholders' Agreement.

13. Special Approval Rights.

(a) Series C Preferred Stock. Without limitation of any approval rights set forth in the Stockholders' Agreement, for so long as at least thirty-three percent (33%) of the Series C Preferred Stock originally issued by the Corporation remains outstanding, the affirmative vote of the Requisite Series C Stockholders shall be necessary to authorize the Corporation to take any of the following actions:

(i) Authorize or increase or permit any Subsidiary to authorize or increase, the authorized number of shares of the Corporation's or any Subsidiary's Capital Securities or Convertible Securities senior to or *pari passu* with the Series C Preferred Stock, or issue any such Capital Securities or Convertible Securities other than pursuant to the Series C Purchase Agreement;

(ii) Amend, repeal or change, directly or indirectly, any of the provisions of the Certificate of Incorporation or by-laws of the Corporation or any Subsidiary if such amendment, repeal or change would have an adverse effect on the rights, preferences or powers of the Series C Preferred Stock;

(iii) Authorize or effect, or permit any Subsidiary to authorize or effect, the sale, transfer, lease, license, abandonment, exchange or other disposition of all or substantially all of the assets of the Company or any Subsidiary; or

(iv) Authorize a Liquidation Event.

(b) Junior Preferred Stock. The affirmative vote of the Requisite Junior Holders shall be necessary to authorize the Corporation to take any of the following actions:

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

(ii) Amend, repeal or change, directly or indirectly, any of the provisions of the Certificate of Incorporation of the Corporation if such amendment, repeal or change would have an adverse effect on the rights, preferences or powers of the Junior Preferred Stock.

(c) The approval rights of the holders of shares of any series of Preferred Stock to authorize the Corporation to take any of the actions subject to the special approval rights set forth in this Section A.13 (each a "Restricted Action") may be exercised at any annual meeting of stockholders, at a special meeting of the holders of Preferred Stock held for such purpose or by written consent. At each meeting of stockholders at which the holders of shares of such series of Preferred Stock shall have the right, voting separately as a single class, to authorize the Corporation to take any Restricted Action as provided in this Section A.13, the presence in person or by proxy of the number of shares necessary to approve such Restricted Action shall be necessary and sufficient to constitute a quorum. At any such meeting or at any adjournment thereof, in the absence of a quorum of the holders of such shares of Preferred Stock, a majority of the holders of such shares present in person or by proxy shall have the power to adjourn the meeting as to the actions to be taken by the holders of such shares of Preferred Stock from time to time and place to place without notice other than announcement at the meeting until a quorum shall be present.

14. Rank. The Series C Preferred Stock shall rank senior in right as to dividends and upon redemption, liquidation, dissolution or winding up to all Junior Securities, whenever issued.

15. Identical Rights. Each share of the Series C Preferred Stock shall have the same relative rights and preferences as, and shall be identical in all respects with, all other shares of the Series C Preferred Stock.

16. Certificates. So long as any shares of the Preferred Stock are outstanding, there shall be set forth on the face or back of each stock certificate issued by the Corporation a statement that the Corporation is authorized to issue more than one class or series of stock and that the powers, designations, preferences and relative participating, optional or other special rights, and the qualifications, limitations or restrictions of such preferences and/or rights of each class or series of stock are set forth in this Certificate of Incorporation.

17. Waiver. Any provision of these terms of the Series C Preferred Stock may be waived if and only if the Requisite Series C Stockholders shall have waived in writing any such provision of this Certificate of Incorporation. Any provision of these terms of the Junior Preferred Stock may be waived if and only if the holders of at least 67% of the outstanding shares of Junior Preferred Stock shall have waived in writing any such provision of this Certificate of Incorporation.

18. Severability of Provisions. If any right, preference or limitation of the Series C Preferred Stock set forth in this Certificate of Incorporation (as such certificate may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule, law or public policy, all other rights preferences and limitations set forth in this Certificate of Incorporation (as so amended from time to time) which can be given effect without implicating the invalid, unlawful or unenforceable right preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other right, preference or limitation unless so expressed herein.

B. COMMON STOCK

1. General. The rights of the holders of the Common Stock with respect to dividends and upon the liquidation, dissolution and winding up of the Corporation's affairs, are subject to and qualified by the rights of the holders of Preferred Stock as specified herein and any other class of the Corporation's Capital Securities that may hereafter be issued and outstanding having rights upon the occurrence of a Liquidation Event senior to or *pari passu* with the rights of holders of Common Stock. Each share of Common Stock shall be treated identically as all other shares of Common Stock with respect to dividends, distributions, rights in liquidation and in all other respects.

2. Voting. Each holder of shares of Common Stock is entitled to one vote for each share thereof held by such holder at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding and the number of shares of Common Stock reserved pursuant to Section A.5) by the affirmative vote of the holders of a majority of the combined number of the Corporation's issued and outstanding Common Stock and Preferred Stock that votes together with the Common Stock generally, irrespective of the provisions of Section 242(b)(2) of the DGCL. Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the DGCL.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors, and subject to any preferential dividend rights of any then outstanding shares of Preferred Stock and any other classes or series of the Corporation's Capital Securities that may hereafter be authorized and issued having preferred dividend rights senior to or *pari passu* with the rights of holders of Common Stock.

4. Liquidation. Upon the occurrence of a liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to the rights and preferences of any then outstanding shares of Preferred Stock and any other classes or series of the Corporation's Capital Securities that are issued and outstanding having rights upon the occurrence of a Liquidation Event senior to or *pari passu* with the rights of holders of Common Stock.

ARTICLE V
PERPETUAL EXISTENCE

The Corporation is to have perpetual existence.

ARTICLE VI
LIMITATION OF LIABILITY; INDEMNIFICATION

1. Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under the Section 2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such

expenses (including attorneys' fees) which the Court of Chancery of Delaware shall deem proper.

3. Indemnification for Expenses of Successful Party. Notwithstanding any other provisions of this Article, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article SIXTH, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith.

4. Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The Corporation shall not be required to indemnify Indemnitee under this Article SIXTH for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

5. Advance of Expenses. Subject to the provisions of Section 6 of this Article SIXTH, in the event that the Corporation does not assume the defense pursuant to Section 4 of this Article SIXTH of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article, any expenses (including attorneys' fees) incurred by or on behalf of an Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter;

provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article; and further provided that no such advancement of expenses shall be made under this Article SIXTH if it is determined (in the manner described in Section 6) that (i) Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his or her conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

6. Procedure for Indemnification. In order to obtain indemnification or advancement of expenses pursuant to Section 1, 2, 3 or 5 of this Article SIXTH, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 30 days after receipt by the Corporation of the written request of Indemnitee, unless the Corporation determines within such 30-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 5 of this Article SIXTH, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 1 or 2 only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion, or (d) by the stockholders of the Corporation.

7. Remedies. The right to indemnification or advancement of expenses as granted by this Article shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 6 of this Article SIXTH that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. Indemnitee's expenses (including attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation.

8. Limitations. Notwithstanding anything to the contrary in this Article, except as set forth in Section 7 of this Article SIXTH, the Corporation shall not indemnify an Indemnitee pursuant to this Article SIXTH in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article, the Corporation shall not

indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, Indemnitee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

9. Subsequent Amendment. No amendment, termination or repeal of this Article or of the relevant provisions of the General Corporation Law of Delaware or any other applicable laws shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

10. Other Rights. The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

11. Partial Indemnification. If an Indemnitee is entitled under any provision of this Article to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including attorneys' fees), judgments, fines or amounts paid in settlement to which Indemnitee is entitled.

12. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of Delaware.

13. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil,

criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

14. Definitions. Terms used herein and defined in Section 145(h) and Section 145(i) of the General Corporation Law of Delaware shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

ARTICLE VII AMENDMENTS

The Corporation reserves the right to amend, alter or repeal any provisions contained in this Certificate of Incorporation from time to time and at any time in the manner now or hereafter prescribed in this Certificate of Incorporation and by the laws of the State of Delaware, and all rights herein conferred upon stockholders are granted subject to such reservation.

ARTICLE VIII MISCELLANEOUS

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

- A. The Board of Directors is expressly authorized to adopt, amend or repeal the bylaws of the Corporation.
- B. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.
- C. The books of the Corporation may be kept at such place within or without the State of Delaware as the bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors.
- D. Meetings of the stockholders may be held within or without the State of Delaware, as the bylaws may provide.

ARTICLE IX DEFINITIONS

The following terms are used herein with the meanings indicated:

“Affidavit of Loss” an affidavit or agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred in connection with the loss of any share certificate evidencing shares of the Corporation’s Capital Securities.

“Affiliate” means, as applied to any specified Person, any Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person and shall also include (a) any Person who is an officer, director, manager or beneficial owner of at least five percent (5%) of the then outstanding Capital Securities of such specified Person and

(b) any Person of which such specified Person or an Affiliate (as defined in clause (a) above) of such specified Person shall, directly or indirectly, either beneficially own at least ten percent (10%) of the then outstanding Capital Securities.

“Appraiser” has the meaning specified in Article IV, Section A.10(b).

“Board of Directors” has the meaning specified in Article IV, Section A.12.

“Business Day” means a day other than a Saturday, Sunday or legal holiday in Boston, Massachusetts.

“Capital Securities” means, as to any Person that is a corporation, the authorized shares of such Person’s capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person.

“Certificate of Incorporation” means this Fourth Amended and Restated Certificate of Incorporation, as amended from time to time.

“Common Stock” has the meaning specified in Article IV (second introductory paragraph).

“Common Stock Deemed Outstanding” means, at any time of measurement thereof, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable upon conversion of the Series C Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Common Stock after the Effective Time), plus (without duplication) the number of shares of Common Stock issuable upon the exercise in full of all outstanding Convertible Securities whether or not such Convertible Securities are convertible into or exchangeable or exercisable for Common Stock at such time.

“Conversion Price” has the meaning specified in Article IV, Section A.3(a).

“Convertible Securities” means securities or obligations that are exercisable for, convertible into or exchangeable for shares of Common Stock. The term includes shares of Series C Preferred Stock, options, warrants or other rights to subscribe for or purchase Common Stock or to subscribe for or purchase other Capital Securities or obligations that are, directly or indirectly, exercisable for, convertible into or exchangeable for Common Stock.

“DGCL” means the General Corporation Law of the State of Delaware, as in effect from time to time.

“Determination Date” has the meaning specified in Section A.10(a).

“Dilutive Issuance” has the meaning specified in Article IV, Section A.4(i).

“Elected Preferred Stock” has the meaning specified in Article IV, Section A.3(c).

“Excluded Securities” means (i) Capital Securities issued by the Corporation in a Qualified Public Offering, (ii) Convertible Securities or restricted stock grants issued to employees or members of the Board of Directors of, or consultants or other service providers to, the Corporation that are options to purchase or grants of up to 3,558,889 shares of Common Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving Common Stock after the Effective Time) or such higher number as may be approved by the Board of Directors of the Corporation, including at least two Series C Director Designees, and the issuance of shares of Common Stock upon the exercise of any such options, (iii) Common Stock issuable upon the exercise of options outstanding as of the Effective Time, (iv) Capital Securities issued in consideration of the acquisition of another Person or business by the Corporation by merger, consolidation, amalgamation, exchange of shares, the purchase of substantially all of the assets or otherwise that has been approved by at least two Series C Director Designees, (v) Capital Securities issued by the Corporation in connection with a stock split, stock dividend, combination, reorganization, recapitalization or other similar event for which adjustment is made in accordance with Article IV, Section A.4, (vi) Capital Securities issued by the Corporation upon the conversion of shares of Series C Preferred Stock, (vii) Common Stock issued to the holders of Junior Preferred Stock upon a Qualified Public Offering in accordance with Article IV, Section A.10(f)(i), and (viii) up to 9,800,000 shares of Series C Preferred Stock issued at one or more additional closings pursuant to the Series C Purchase Agreement.

“Fair Market Value” has the meaning specified in Section A.10(b).

“Junior Preferred Liquidation Preference” means the Junior Preferred Purchase Price.

“Junior Preferred Purchase Price” means \$1.00 per share of Junior Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving the Junior Preferred Stock after the Effective Time).

“Junior Preferred Stock” has the meaning specified in Article IV (second introductory paragraph).

“Junior Securities” means any of the Corporation’s Common Stock and all other Capital Securities and Convertible Securities of the Corporation other than Series C Preferred Stock.

“Liquidation Event” has the meaning specified in Article IV, Section A.2(a)(i).

“Maturity Date” means July 19, 2009.

“Optional Redemption” has the meaning specified in Article IV, Section A.10(a).

“Original Issuance Date” means the date on which a share of Series C Preferred Stock was first issued.

"Person" or "person" means an individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization or other entity and any government, governmental department or agency or political subdivision thereof.

"Public Offering" means any offering by the Corporation of its Common Stock to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, or any comparable statement under any similar federal statute then in force, other than an offering of shares being issued as consideration in a business acquisition or combination or an offering in connection with an employee benefit plan.

"Qualified Public Offering" has the meaning specified in Article IV, Section A.3(b).

"Redemption Notice" has the meaning specified in Article IV, Section A.10(a).

"Requisite Junior Holders" means the holders of at least sixty-seven percent (67%) of the Junior Preferred Stock.

"Requisite Percentage Holders" has the meaning specified in Section A.10(b).

"Requisite Series C Stockholders" means the holders of at least sixty-seven percent (67%) of the issued and outstanding Series C Preferred Stock.

"Restricted Action" has the meaning specified in Article IV, Section A.13(c).

"Sale of the Corporation" means any of the following: (a) a merger or consolidation of the Corporation into or with any other Person or Persons who are not Affiliates of the Corporation in a single transaction or a series of related transactions, in which the stockholders of the Corporation immediately prior to such merger, consolidation, transaction or first of such series of transaction possess less than a majority of the Corporation's issued and outstanding voting Capital Securities immediately after such merger, consolidation, transaction or series of such transactions (*provided* that a Qualified Public Offering or the sale of Series C Preferred Stock having such an effect shall not be a "Sale of the Corporation"); or (b) a single transaction or series of transactions, whether or not such transactions are related, pursuant to which a Person or Persons who are not Affiliates of the Corporation acquire all or substantially all of the Corporation's assets determined on a consolidated basis.

"Series C Director Designees" has the meaning specified in Article IV, Section A.12.

"Series C Liquidation Preference" has the meaning specified in Article IV, Section A.1(a).

"Series C Preferred Dividends" has the meaning specified in Article IV, Section A.1(a).

"Series C Preferred Holder" has the meaning specified in Article IV, Section A.4(i).

"Series C Preferred Stock" has the meaning specified in Article IV (second introductory paragraph).

“Series C Purchase Agreement” means that certain Securities Purchase Agreement dated as of the Original Issuance Date by and among the Corporation and the Investors defined therein.

“Series C Purchase Price” means \$1.02052 per share of Series C Preferred Stock (as equitably adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving the Series C Preferred Stock after the Effective Time).

“Special Mandatory Conversion” has the meaning specified in Article IV, Section A.4(i).

“Stockholders’ Agreement” the Stockholders’ Agreement dated on or about the date of the first issuance of Series C Preferred Stock by and among the Corporation and the other parties thereto as such agreement may be amended and/or restated from time to time.

“Subsidiary”/“Subsidiaries” means any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is at the time owned or controlled, directly or indirectly, by the Corporation or one or more of the other Subsidiaries of the Corporation or a combination thereof, or (ii) if a partnership, limited liability company, association or other business entity, a majority of the ownership interests therein is at the time owned or controlled, directly or indirectly, by the Corporation or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, the Corporation shall be deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if the Corporation shall be allocated a majority of partnership, limited liability company, association or other business entity gains or losses or shall be or control the managing general partner of such partnership, association or other business entity or the managing member of such limited liability company.

“Valuation Procedures” has the meaning specified in Article IV, Section A.10(b).

“Voluntary Conversion Notice” has the meaning specified in Article IV, Section A.3(c).

I, Simon Everitt, the President of the Corporation, for the purpose of amending and restating the Corporation's certificate of incorporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed on behalf of the Corporation, and the facts herein stated are true, and accordingly hereunto set my hand this 23rd day of August, 2004.

TARAL NETWORKS, INC.

By: /s/ Simon J. Everitt

Name: Simon J. Everitt

Title: President and CEO

I, Simon Everitt, the President of the Corporation, for the purpose of amending and restating the Corporation's certificate of incorporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed on behalf of the Corporation, and the facts herein stated are true, and accordingly hereunto set my hand this ____ day of August, 2004.

TARAL NETWORKS, INC.

By: 

Name: S. G. GUBMIT

Title: President & CEO.