

02-15-2005



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To the Director of the U.S. Patent and Trad

...the attached documents or the new address(es) below.

2-10-05

1. Name of conveying party(ies)/Execution Date(s):

Athena Healthcare Incorporated

- Individuals
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

Citizenship (see guidelines)

Execution Date(s) March 31, 2000

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: athenahealth.com, Inc.

Internal Address:

Street Address: 1013 Centre Road

City: Wilmington

State: Delaware

Country: U.S.A. Zip: 19805

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate documents from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)
75/451,283

B. Trademark Registration No.(s)
2,737,212 and 2,737,126

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: James E. Griffith, Esq.

Internal Address: Suite 4400

Street Address: 227 W. Monroe Street

City: Chicago

State: Illinois Zip: 60606

Phone Number: 312.372.2000

Fax Number: 312.984.7700

Email Address: Chicago_ip_docket@mwe.com

6. Total number of application and registrations involved:

3

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 90.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers

Expiration Date

b. Deposit Account Number 13-0206

Authorized User Name McDermott, Will & Emery

9. Signature:

James E. Griffith
Signature

February 7, 2005
Date

James E. Griffith
Name of Person Signing

Total number of pages included cover sheet, attachments, and document

21

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

75/451283
13/0206
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02/14/2005
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Delaware

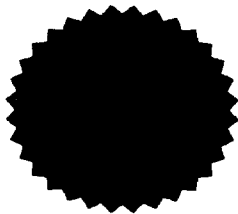
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The First State

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 "ATHENA HEALTHCARE INCORPORATED", CHANGING ITS NAME FROM "ATHENA HEALTHCARE INCORPORATED" TO "ATHENAHEALTH.COM, INC.", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF MARCH, A.D. 2000, AT 9 O'CLOCK A.M.

2787961 8100

050068743



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3644930

DATE: 01-27-05

TRADEMARK
REEL: 003119 FRAME: 0639

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

Athena Healthcare Incorporated

Under Sections 242 and 245 of the

Delaware General Corporation Law

The undersigned, President of athenahealth.com, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies that:

FIRST: The name of the Corporation shall be changed to "athenahealth.com, Inc."

SECOND: The Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on the 21st day of August, 1997 under the name "Athena Healthcare Incorporated."

THIRD: This Second Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

FOURTH: The text of the Amended and Restated Certificate of Incorporation of Athena Healthcare Incorporated hereby is amended and restated to read as herein set forth in full.

THE UNDERSIGNED, does make this Certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly has hereunto set the undersigned's hand as of the 31st day of March, 2000.



Todd Park, President
athenahealth.com, Inc.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 03/31/2000
001165302 - 2787961

TRADEMARK
REEL: 003119 FRAME: 0640

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

athenahealth.com, Inc.

* * * * *

1. Name. The name of the Corporation is athenahealth.com, Inc.
2. Address. The address of the registered office of the Corporation in the State of Delaware is 1013 Centre Road, Wilmington, New Castle County, Delaware 19805. The name of its registered agent at that address is The Prentice-Hall Corporation System, Inc.
3. Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "GCL").
4. Authorized Capital. The total number of shares of all classes of stock which the Corporation shall have the authority to issue is 35,000,000 shares consisting of 20,000,000 shares of Common Stock, \$.01 par value per share (the "Common Stock"), and 15,000,000 shares of Preferred Stock, \$.01 par value per share (the "Preferred Stock").
5. Power to Designate Series. The Board of Directors of the Corporation is hereby expressly vested with the power to issue one or more series of the Preferred Stock of the Corporation from time to time and by resolution to designate the powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of any such series to the extent not inconsistent with the provisions of paragraph 6 or in conflict with the powers, designations, preferences or relative, participating, optional or other special rights, or the qualifications, limitations or restrictions of any other series fixed by resolution of the Board of Directors and set forth in a certificate of designation filed with the Secretary of State of Delaware.
6. Preferred Stock.
 - 6.1 Designation. One Million Six Hundred Thousand (1,600,000) shares of the Preferred Stock of the Corporation are hereby designated as "Series A-1 Convertible Preferred Stock" and are hereinafter referred to as "Series A-1 Preferred;" One Million Forty-Five Thousand Fifteen (1,045,015) shares of the Preferred Stock of the Corporation are hereby designated as "Series A-2 Convertible Preferred Stock" and are hereinafter referred to as "Series A-2 Preferred;" One Million Two Hundred Fifty Thousand (1,250,000) shares of the Preferred Stock of the Corporation are hereby designated as "Series B-1 Convertible Preferred Stock" and are hereinafter referred to as "Series B-1 Preferred;" One Hundred Twenty-Seven Thousand Six

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Hundred Five (127,605) shares of the Preferred Stock of the Corporation are hereby designated "Series B-2 Convertible Preferred Stock" and are hereinafter referred to as "Series B-2 Preferred"; and Eight Million (8,000,000) shares of the Preferred Stock of the Corporation are hereby designated "Series C Convertible Preferred Stock" and are hereinafter referred to as "Series C Preferred." As used herein, the term "Preferred Stock" means collectively, the Series A-1 Preferred, the Series A-2 Preferred, the Series B-1 Preferred, the Series B-2 Preferred and the Series C Preferred, share for share alike and without distinction as to series, except as otherwise expressly provided or as the context requires otherwise.

6.2 Voting Power.

(a) General. Except as may be otherwise provided herein or by law, the Preferred Stock shall vote with the Common Stock as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of whole shares of Common Stock into which each such share of Preferred Stock is then convertible.

(b) Director Election Right. The holder of the outstanding shares of the Series C Preferred, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation (the "Series C Directors"). At any annual or special meeting of the Corporation (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or by written consent) of the holders of a majority of the outstanding shares of Series C Preferred shall constitute a quorum for the election of the Series C Directors. The Corporation agrees to reimburse the Series C Directors for reasonable expenses incurred in attending board meetings and performing work on behalf of the Corporation.

6.3 Dividends. No dividends (other than dividends or distributions payable solely in shares of Common stock of the Corporation) shall be paid or declared, and no other distribution shall be made, on or with respect to the Common Stock of the Corporation unless and until (i) dividends with respect to the Preferred Stock shall have been paid, or declared and set aside for payment, in an amount which the holders of Preferred Stock would have received if they had converted their Preferred Stock into Common Stock immediately prior to the record date for such dividend or distribution, and (ii) the holders of the Series C Preferred shall have received, in addition to the amount payable pursuant to the foregoing clause (i), their Non-Cumulative Return for that fiscal year as described below. No dividends shall be paid or declared, and no other distribution shall be made, on or with respect to either the Series A-1 Preferred, the Series A-2 Preferred, the Series B-1 Preferred, or the Series B-2 Preferred unless and until (x) equivalent dividends (treating each series on an as converted basis) with respect to the Series C Preferred shall have been paid, or declared and set aside for payment, in an amount which the holders would have received if they had converted their Preferred Stock into Common stock immediately prior to the record date for such dividend or distribution, and (y) the holders of the Series C Preferred shall have received, in addition to the amount payable pursuant to the foregoing clause (x), their Non-Cumulative Return for that fiscal year as described below. The

holders of the Series C Preferred shall be entitled to receive dividends at a rate of eight percent (8%) per annum, payable as, if and when declared by the Board of Directors of the Corporation (the "Non-Cumulative Return"). Such dividends shall not be cumulative, and, therefore, if not declared in any fiscal year of the Corporation, the right to such dividend shall terminate and shall not carry forward to the next fiscal year.

6.4 Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the liquidation of the assets of the Corporation shall be accomplished as follows:

(a) Before any distribution or payment is made upon any other capital stock of the Corporation, holders of the Series C Preferred shall first be entitled to receive \$1.40 from the assets of the Corporation for each share of Series C Preferred plus any declared but unpaid dividends thereon, which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification, or other similar event affecting the Series C Preferred. The amount to be received by holders of Series C Preferred as aforesaid is referred to herein as the "Series C Liquidation Preference Payment." After payment of all preferential amounts to be paid to the holders of Series C Preferred, the holders of the Series A-2 Preferred shall be entitled to receive \$1.35 from the assets of the Corporation for each share of Series A-2 Preferred, which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event affecting the Series A-2 Preferred. The amount to be received by holders of Series A-2 Preferred as aforesaid is referred to herein as the "Series A-2 Liquidation Preference Payment." After payment of all preferential amounts to be paid to the holders of Series A-2 Preferred, the holders of the Series A-1 Preferred shall be entitled to receive \$1.00 from the assets of the Corporation for each share of Series A-1 Preferred, which amount shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event affecting the Series A-1 Preferred. The amount to be received by holders of Series A-1 Preferred as aforesaid is referred to herein as the "Series A-1 Liquidation Preference Payment." After payment of all preferential amounts to be paid to the holders of Series A-1 Preferred, the holders of the Series B-2 Preferred shall be entitled to receive \$.26 from the assets of the Corporation for each share of Series B-2 preferred, which amount shall be subject to equitable adjustment wherever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event affecting Series B-2 Preferred. The amount to be received by holders of Series B-2 Preferred as aforesaid is referred to herein as the "Series B-2 Liquidation Preference Payment." After payments of all preferential amounts to be paid to the holders of Series B-2 Preferred, the holders of the Series B-1 Preferred shall be entitled to receive \$.048 from the assets of the Corporation for each share of Series B-1 Preferred, which amount shall be subject to equitable adjustment wherever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event affecting the Series B-1 Preferred. The amount to be received by holders of Series

B-1 Preferred as aforesaid is referred to herein as the "Series B-1 Liquidation Preference Payment."

(b) Upon any such liquidation, dissolution or winding up of the Corporation, if the assets of the Corporation available for distribution to its stockholders shall be insufficient to permit the payment in full of the Series C Liquidation Preference Payment, then the assets available for distribution shall be distributed among the holders of the Series C Preferred ratably in proportion to the full amount to which they would otherwise be entitled. If the assets of the Corporation available for distribution to its stockholders in any such event exceed the amount of the Series C Liquidation Preference Payment, the assets remaining after payment of such amount shall be paid ratably to the holders of the Series A-2 Preferred until they have received full payment of the Series A-2 Liquidation Preference Payment. If the assets of the Corporation available for distribution to its stockholders in any such event exceed the amount of the Series A-2 Liquidation Preference Payment, the assets remaining after payment of such amount shall be paid ratably to the holders of the Series A-1 Preferred until they have received full payment of the Series A-1 Liquidation Preference Payment. If the assets of the Corporation available for distribution to its stockholders in any such event exceed the amount of the Series A-1 Liquidation Preference Payment, the assets remaining after payment of such amount shall be paid ratably to the holders of the Series B-2 Preferred until they have received full payment of the Series B-2 Liquidation Preference Payment. If the assets of the Corporation available for distribution to its stockholders in any such event exceed the amount of Series B-2 Liquidation Preference Payment, the assets remaining after payment of such amount shall be paid ratably to the holders of Series B-1 Preferred until they have received full payment of the Series B-1 Liquidation Preference Payment.

(c) Upon the completion of the distribution required by Paragraph 6.4(b) above, any remaining assets of the Corporation available for distribution shall be paid to the holders of Common Stock, Series B-1 Preferred, and Series C Preferred pro rata based upon the number of shares of Common Stock held by each (assuming full conversion into Common Stock of all such Series B-1 Preferred and Series C Preferred), provided however, that the distributions to the holders of Series C Preferred shall be limited to \$4.00 per share (adjusted for any stock splits, stock dividends, recapitalizations or the like) including amounts paid pursuant to Paragraph 6.4(b) above (the "Common Distribution").

(d) An acquisition of the Corporation by means of merger or sale of all or substantially all of the assets of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.4.

(e) Written notice of such liquidation, dissolution or winding up, stating a payment date and the place where such payments shall be made, shall be given by mail, postage prepaid, or by fax, not less than 30 days prior to the payment date stated therein to the holders of record of Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

by

- (y) an amount equal to the sum of (i) the total number of shares of Common Stock issued and outstanding or deemed in accordance with subparagraphs 6.5(d)(i) through 6.5(d)(vi) hereof to be issued and outstanding immediately prior to such issuance or sale (with each share of Preferred Stock being deemed for such purpose to be equal to the number of shares of Common Stock, including fractions of a share, into which such share is convertible immediately prior to such issuance or sale), plus (ii) the number of shares of Common Stock actually issued or sold or deemed to have been issued or sold in accordance with subparagraphs 6.5(d)(i) through 6.5(d)(vi) hereof.

For purposes of this subparagraph (d), the following subparagraphs (i) to (vi) shall also be applicable:

(i) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issuance or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect and applicable to the Series A-1 Preferred, Series A-2 Preferred, Series B-2 Preferred or Series C Preferred immediately prior to the time of the granting of such Options or the issuance or sale of Convertible Securities, then the shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph d(iii), no adjustment of the Conversion Price for any such series of Preferred Stock shall be made thereafter upon the actual issuance of such Common Stock or of such convertible Securities upon

exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (x) the total amount received or receivable by the Corporation as consideration for the issuance or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (y) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect and applicable to the Series A-1 Preferred, Series A-2 Preferred, Series B-2 Preferred or Series C Preferred immediately prior to the time of such issuance or sale, then the shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issuance or sale of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in subparagraph (d)(iii), no further adjustment of the Conversion Price for any such series of Preferred Stock shall be made thereafter upon the actual issuance of such Common Stock or upon conversion or exchange of such Convertible Securities. If any such issuance or sale of such Convertible Securities is made upon exercise of any options to purchase any such Convertible Securities for which adjustments of the Conversion Price for any series of Preferred Stock have been or are to be made pursuant to other provisions of this subparagraph (d), no further adjustment of such Conversion Price shall be made by reason of such issuance or sale.

(iii) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in subparagraph (d)(i), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subparagraph (d)(i) or (d)(ii), or the rate at which Convertible Securities referred to in subparagraph (d)(i) or (d)(ii) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price for the Series A-1 Preferred, Series A-2 Preferred, Series B-2 Preferred or Series C Preferred in effect at the time of such event shall forthwith be readjusted to the Conversion Price for such series of Preferred Stock which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment, such Conversion Price then in effect hereunder is thereby reduced; and on the expiration of any such Options without exercise of any thereof or the termination of any such right to convert or exchange such Convertible Securities without conversion or exchange of any thereof, the Conversion Price for such series of Preferred Stock then in effect hereunder shall forthwith be increased to the Conversion Price which would have

been in effect at the time of such expiration or termination had such Option or Convertible Securities never been issued.

(iv) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issuance and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

(v) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (x) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (y) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(vi) Treasury Shares. The disposition of any shares owned or held by or for the account of the Corporation shall be considered an issuance or sale of Common Stock for the purposes of this subparagraph 6.5(d).

(e) Automatic Conversion upon Public Offering or Election. All outstanding shares of Series C Preferred shall automatically convert to shares of Common Stock, at the then applicable conversion rate, in the event of (i) the closing of a firmly underwritten public offering of shares of the Corporation at a public offering price of at least Four Dollars (\$4.00) per share (as adjusted for a stock dividend, stock split, combination, reorganization, recapitalization, reclassification, or other similar event affecting the Series C Preferred) resulting in aggregate gross proceeds to the Company equal to or greater than Fifteen Million Dollars (\$15,000,000.00) (a "Qualified Public Offering"), or (ii) upon the vote, set forth in a written notice to the Corporation, of Sixty-Six and Two Thirds Percent (66-2/3%) of the holders of the Series C Preferred. All outstanding shares of Series A-1 Preferred, Series A-2 Preferred, Series B-1 Preferred and Series B-2 Preferred shall automatically convert to shares of Common

Stock at the then applicable conversion rate upon the closing of a firm commitment underwritten public offering of shares of Common Stock pursuant to an effective registration statement. Upon the occurrence of the conversion events specified in this subparagraph 6.5(e), the holders of the Preferred Stock shall be subject to the provisions set forth in subparagraph 6.5(b) above regarding issuance of certificates upon conversion and effective time of conversion.

(f) Certain Issuances of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price for any series of Preferred Stock upon issuance of:

(i) Common Stock upon the conversion of any shares of Series C Preferred, Series A-2 Preferred, Series A-1 Preferred, Series B-2 Preferred or Series B-1 Preferred; or

(ii) shares of the Corporation's Common Stock or related options or purchase agreements or other rights to acquire Common Stock issued to employees, officers and directors of, and consultants, customers, and vendors to, the Corporation or one of its subsidiaries or affiliated clinics, pursuant to any arrangement approved by at least a majority of the Board of Directors of the Corporation (other than capital stock or related options or purchase agreements, warrants, capital appreciation rights, calls, convertible shares or other rights issued in transactions with the primary purpose of raising capital); or

(iii) securities issued as consideration in connection with the acquisition of another corporation, partnership, limited liability company or other entity by the Corporation by merger, purchase of all or substantially all of the assets, or purchase of not less than 51% of the stock; or

(iv) any issuance of shares, options or warrants to be issued with the approval of the Series C Directors, to (x) lenders in conjunction with the borrowing of working capital by the Corporation or (y) equipment leasing organizations in conjunction with any equipment leasing arrangements to which the Corporation is a party.

(g) Certain Holders of Preferred Stock Excepted. Anything to the contrary notwithstanding in subparagraph 6.5(d):

(i) If the Corporation proposes to undertake a Dilutive Financing (as defined below) with respect to any series of Preferred Stock, the Corporation shall give each holder of shares of such series of Preferred Stock written notice (the "Issuance Notice") of such intention, describing in full detail the type and number of new securities to be issued, the price thereof and the terms and conditions upon which the Corporation proposes to effectuate such issuance. Each holder of shares of such series of Preferred Stock shall have fifteen (15) days from the date of the Issuance Notice to agree to purchase all or part of its Pro Rata Fraction of the securities in the Dilutive Financing for the price and upon the terms and conditions specified

in the Issuance Notice, by giving written notice to the Company stating the quantity of such securities to be so purchased. If such holder fails to give such notice within the fifteen (15) day period, or fails to purchase its full Pro Rata Fraction (other than as a result of the refusal by the Corporation (or by other security holders who hold rights to purchase such securities) to allow such holder to so purchase its full Pro Rata Fraction), such holder shall be deemed to be a Nonparticipating Holder.

(ii) To the extent of the percentage of the full Pro Rata Fraction not purchased (the "Refused Percentage") by each Nonparticipating Holder, that number of outstanding shares of Preferred Stock of the relevant series held by such Nonparticipating Holder equal to the product of (x) the number of shares of Preferred Stock of such series held by such Nonparticipating Holder, times (y) the Refused Percentage (with any fraction in the resulting number of shares being rounded up to the next higher whole number), shall no longer be entitled to any adjustments to the Conversion Price applicable to such series of Preferred Stock (if any), pursuant to subparagraph 6.5(d) and such Nonparticipating Holder, as to the number of shares of Preferred Stock of such series resulting from such calculation (the "Nonparticipating Shares"), shall be deemed to have waived, effective as of the closing (or first closing, if more than one closing) of the Dilutive Financing, (i) the reduction in the Conversion Price applicable to such series of Preferred Stock (if any) that would have resulted pursuant to subparagraph 6.5(d) from such, or any subsequent, issuance or sale, or deemed issuance or sale, and (ii) the right to receive, upon conversion of such holder's Nonparticipating Shares, any additional shares of Common Stock that would have been issuable as a result of such reduction in such Conversion Price (if any), and such waiver shall be binding upon any transferee of the Nonparticipating Shares. If the application of the foregoing results in there being more than one Conversion Price for a particular series of Preferred Stock, the Secretary of the Corporation shall keep a written ledger identifying the Conversion Price in effect for each outstanding share of such series of Preferred Stock, which information shall be made available to any person upon request, and the Conversion Price for triggering future adjustment of the Conversion Price for such series of Preferred Stock for any shares which have not had any such adjustment waived in connection with such, or any prior, Dilutive Financing shall be the lowest Conversion Price for such series of Preferred Stock in effect.

(iii) All certificates representing shares of Preferred Stock shall have affixed thereto a legend substantially in the following form:

"The shares represented by this certificate are convertible into shares of Common Stock at a rate which may vary among different stockholders of the Corporation. Information concerning the conversion rate applicable to the shares represented by this certificate may be obtained from the Secretary of the Corporation.

(iv) For the purposes of this subparagraph 6.5(g):

(i) a "Dilutive Financing" with respect to any series of Preferred Stock shall mean the issuance or sale or deemed issuance or sale, of any shares of Common Stock for a consideration per share less than the lowest Conversion Price for such series in effect immediately prior to the time of such issuance or sale, or deemed issuance or sale, but shall not include the issuances or deemed issuances specified in subparagraph 6.5(f).

(ii) "Pro Rata Fraction" for a holder shall mean a fraction, the numerator of which shall be the number of shares of Common Stock issuable upon conversion of all shares of all series of Preferred Stock held by such holder and the denominator of which shall be the aggregate number of shares of Common Stock outstanding (with all shares of Preferred Stock included on an as-if-converted basis).

(h) Subdivision or Combination of Common Stock. In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price for each series of Preferred Stock in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of Common Stock shall be combined into a smaller number of shares, the Conversion Price for each series of Preferred Stock in effect immediately prior to such combination shall be proportionately increased.

(i) Reorganization or Reclassification. Subject to the provisions of Section 6.4 above, if any capital reorganization or reclassification of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of shares of Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such shares of Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(j) Notice of Adjustment. Upon any adjustment of the Conversion Price for any series of Preferred Stock, the Corporation shall give written notice thereof, by first class mail, postage prepaid or by facsimile, addressed to each holder of shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price for the series of Preferred Stock resulting from such adjustment, setting forth in reasonable detail the calculation upon which such adjustment is based.

(k) Other Notices. In case at any time:

(i) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(ii) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class, or other rights;

(iii) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into, or a sale of all or substantially all its assets to, another entity or entities; or

(iv) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in an one or more of said cases, the Corporation shall give, by first class mail, postage prepaid, or by facsimile, addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (i) at least 10 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up and (ii) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 20 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause shall also specify (1) in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and (2) the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

(l) Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issuance thereof; provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Preferred Stock which is being converted.

(m) Definition of Common Stock. As used herein, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, \$.01 par value per share, as constituted on the date of filing of this Second Amended and Restated Certificate of Incorporation, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall neither be limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends nor entitled to a preference in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in subparagraph 6.5(h).

6.6 Extraordinary Corporate Transactions. Except to the extent the following covenants and provisions of this Section 6.6 are waived in any instance by the holders of at least a majority of the outstanding shares of Series C Preferred or as otherwise specifically approved by the Board of Directors, which approval must include the affirmative vote or consent of the Series C Directors, the Corporation will not, until the occurrence of a Qualified Public Offering:

1. Create, authorize or issue any class or series of capital stock with equity features or convertible into equity ranking on a parity with or senior to the Series C Preferred with respect to liquidation preferences, dilution protection, redemption rights, or payment of dividends, or otherwise having terms and conditions superior to the terms of the Series C Preferred.
2. Materially adversely change the rights, preferences or privileges of the Series C Preferred or increase the authorized number of shares of the Series C Preferred.
3. Sell, lease or otherwise dispose of (i) all or substantially all of its assets or (ii) any material subsidiary.
4. Adopt a plan of liquidation, dissolution or winding up.
5. Engage in any consolidation or merger with or into any other person or entity, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the Corporation or other entity surviving such transaction immediately after such transaction, or any transaction or series of related transactions in which in excess of 50% of the Corporation's voting power is transferred.
6. Increase or decrease the size of the Board of Directors.

6.7 Restrictions on Alteration of Rights.

(a) At any time when shares of Series A-1 Preferred are outstanding, in addition to any other vote required by law or the Corporation's Second Amended and Restated Certificate of Incorporation, the Corporation will not without the approval of the holders of at least a majority of the then outstanding shares of Series A-1 Preferred, voting as a class, either in writing or by ballot at a duly called meeting, increase the authorized number of shares of Series A-1 Preferred or alter the powers, preferences or rights of the holders of shares of Series A-1 Preferred so as to affect them adversely; provided, however, that for purposes of the foregoing provision, the Corporation's authorization of one or more series of securities with rights ranking senior to or equal to the rights designated to the Series A-1 Preferred shall not be deemed to affect the holders thereof adversely.

(b) At any time when shares of Series A-2 Preferred are outstanding, in addition to any other vote required by law or the Corporation's Second Amended and Restated Certificate of Incorporation, the Corporation will not without the approval of the holders of at least a majority of the then outstanding shares of Series A-2 Preferred, voting as a class, either in writing or by ballot at a duly called meeting, increase the authorized number of shares of Series A-2 Preferred or alter the powers, preferences or rights of the holders of shares of Series A-2 Preferred so as to affect them adversely; provided, however, that for purposes of the foregoing provision, the Corporation's authorization of one or series of securities with rights ranking senior to or equal to the rights designated to the Series A-2 Preferred shall not be deemed to affect the holders thereof adversely.

(c) At any time when shares of Series B-1 Preferred are outstanding, in addition to any other votes required by law or the Corporation's Amended and Restated Certificate of Incorporation, the Corporation will not without the approval of the holders of at least a majority of the then outstanding shares of Series B-1 Preferred, voting as a class, either in writing or by ballot at a duly called meeting, increase the authorized number of shares of Series B-1 Preferred or alter the powers, preferences or rights of the holders of shares of Series B-1 Preferred so as to affect them adversely; provided, however, that for purposes of the foregoing provision, the Corporation's authorization of one or more series of securities with rights ranking senior to or equal to the rights designated to the Series B-1 Preferred shall not be deemed to affect the holders thereof adversely.

(d) At any time when shares of Series B-2 Preferred are outstanding, in addition to any other vote required by law or the Corporation's Amended and Restated Certificate of Incorporation, the Corporation will not without the approval of the holders of at least a majority of the then outstanding shares of Series B-2 Preferred, voting as a class, either in writing or by ballot at a duly called meeting, increase the authorized number of shares of Series B-2 Preferred or alter the powers, preferences or rights of the holders of shares of Series B-2 Preferred so as to affect them adversely; provided, however, that for purposes of the foregoing provision, the Corporation's authorization of one or more series of securities with rights ranking

senior to or equal to the rights designated to the Series B-2 Preferred shall not be deemed to affect the holders thereof adversely.

7. Provisions for Management of the Corporation. The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation and for further definition, limitation and regulation of the powers of the Corporation and of its Directors and stockholders:

7.1 Power of Board of Directors. The business and affairs of the Corporation will be managed by or under the directions of the Board of Directors. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the Directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the statutes of Delaware, this Second Amended and Restated Certificate of Incorporation, and any By-Laws adopted by the stockholders of the Corporation; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the Directors which would have been valid if such By-Laws had not been adopted.

7.2 Number of Elections of Directors. The number of Directors will be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of Directors need not be by written ballot unless the By-Laws so provide.

7.3 By-Laws. The Directors will have concurrent power with the stockholders to make, amend, or repeal the By-Laws of the Corporation.

8. Meetings of Stockholders; Corporate Books. Meetings of the stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes of Delaware) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

9. Liability of Directors and Officers. No Director of the Corporation will be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which the Director derived an improper personal benefit, it being the intention of the foregoing provision to eliminate the liability of the Corporation's Directors to the Corporation or its stockholders to the fullest extent permitted by Section 102(b)(7) of the GCL, as amended from time to time. The Corporation shall indemnify to the fullest extent permitted by Sections 102(b)(7) and 145 of the GCL, as amended from time to time, each person that such Sections grant the Corporation the power to indemnify.

10. Arrangements with Creditors. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of the GCL or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of the GCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the corporation, as the case may be, and also on the Corporation.

11. Amendment. The Corporation reserves the right to amend or repeal any provision contained in this Second Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.