

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Conversion of Assignee from Florida Corporation to Delaware Corporation

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
CallMiner, Inc.		06/21/2006	CORPORATION: FLORIDA

RECEIVING PARTY DATA

Name:	CallMiner, Inc.
Street Address:	4310 Metro Parkway #210
City:	Fort Myers
State/Country:	FLORIDA
Postal Code:	33916
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 7

Property Type	Number	Word Mark
Serial Number:	78280987	CALLMINER
Registration Number:	2945186	TRENDMINER
Registration Number:	2945187	TIRELESS SUPERVISOR
Serial Number:	78537660	TOPICMINER
Registration Number:	3149854	FIND YOUR VOICE
Registration Number:	3140708	VIRTUAL SERVER ROOM
Serial Number:	77059138	EUREKA!

CORRESPONDENCE DATA

Fax Number: (617)646-8646
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 617-646-8000
 Email: drwtrademarks@wolfgreenfield.com
 Correspondent Name: Douglas R. Wolf
 Address Line 1: 600 Atlantic Avenue
 Address Line 4: Boston, MASSACHUSETTS 02210

CH \$190.00 78280987

ATTORNEY DOCKET NUMBER:	C1141.40000US00
NAME OF SUBMITTER:	Douglas R. Wolf
Signature:	/drw/
Date:	10/02/2007

Total Attachments: 37

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FLORIDA DEPARTMENT OF STATE
Division of Corporations

June 22, 2006

KIMBERLY MORET
CSC
TALLAHASSEE, FL

Re: Document Number P02000079037

The Certificate of Conversion was filed on June 21, 2006 converting CALLMINER, INC., a Florida corporation, into another business entity.

Enclosed is the requested certification.

Should you have any further questions concerning this matter, please feel free to call (850) 245-6051, the Registration Filing Section.

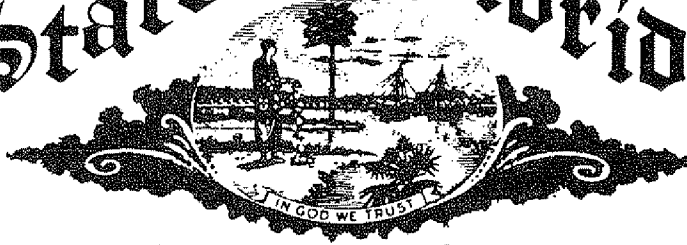
Buck Kohr
Document Specialist
Division of Corporations

Letter Number: 406A00041780

Account number: 072100000032

Amount charged: 43.75

State of Florida



Department of State

I certify the attached is a true and correct copy of the Certificate of Conversion, filed on June 21, 2006, converting CALLMINER, INC., a Florida corporation, into another business entity, as shown by the records of this office.

The document number of the converted entity is P02000079037.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-second day of June, 2006



CR2EO22 (01-06)

Sue M. Cobb
Sue M. Cobb
Secretary of State

TRADEMARK

REEL: 003632 FRAME: 0440

CERTIFICATE OF CONVERSION FOR
FLORIDA PROFIT CORPORATION INTO
OTHER BUSINESS ENTITY

FILED
2006 JUN 21 AM 9:44
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

1. The name of the Florida Profit Corporation converting to the Other Business Entity is CallMiner, Inc., a Florida corporation (the "Florida Corporation").

2. The name of the Other Business Entity is CallMiner, Inc., a corporation incorporated under the laws of the state of Delaware (the "Delaware Corporation").

3. The above-referenced Florida Corporation has converted into the Delaware Corporation in compliance with Florida Statutes Chapter 607, and the conversion complies with the applicable laws of the State of Delaware governing the Delaware Corporation.

4. The plan of conversion was approved by the converting Florida Corporation in accordance with Florida Statutes Chapter 607.

5. This conversion was effective under the laws of the State of Delaware governing the Delaware Corporation on June 21, 2006.

6. This conversion shall be effective in Florida on June 21, 2006.

7. The principal office address of the Delaware Corporation is as follows:

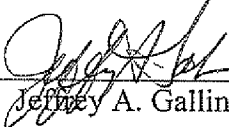
4310 Metro Parkway, Suite 210
Fort Myers, Florida 33916

8. The Delaware Corporation is an out-of-state entity not registered to transact business in Florida. The Delaware Corporation appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of the converting Florida Corporation, including any appraisal rights of shareholders of the converting Florida Corporation under Florida Statutes §§ 607.1301 – 607.1333. The Florida Department of State may use the following street and mailing address for purposes of Florida Statutes § 607.1114(4):

4310 Metro Parkway, Suite 210
Fort Myers, Florida 33916

9. The Delaware Corporation has agreed to pay any shareholders having appraisal rights the amount to which they are entitled under Florida Statutes §§ 607.1301 – 607.1333.

Signed this 21 day of June, 2006.

By: 
Jeffrey A. Gallino, President

Delaware

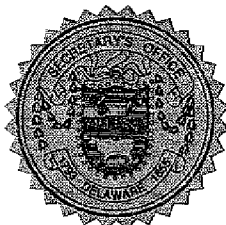
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The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "CALLMINER, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-SECOND DAY OF JUNE, A.D. 2006.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "CALLMINER, INC." WAS INCORPORATED ON THE TWENTY-FIRST DAY OF JUNE, A.D. 2006.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.



4178909 8300

060598726

Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 4845941

DATE: 06-22-06

TRADEMARK
REEL: 003632 FRAME: 0442

Delaware

PAGE 1

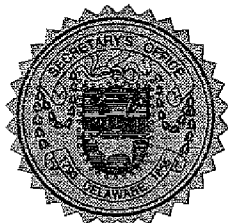
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A FLORIDA CORPORATION UNDER THE NAME OF "CALLMINER, INC." TO A DELAWARE CORPORATION, FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF JUNE, A.D. 2006, AT 4:51 O'CLOCK P.M.

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

4178909 8100V

060598726



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4845939

DATE: 06-22-06

TRADEMARK
REEL: 003632 FRAME: 0443

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A NON-DELAWARE CORPORATION
PURSUANT TO SECTION 265 OF THE
DELAWARE GENERAL CORPORATION LAW

1. The name of the Non-Delaware Corporation immediately prior to filing this Certificate is CallMiner, Inc.
2. The Non-Delaware Corporation was first incorporated in Florida on July 22, 2002.
3. The jurisdiction of the Non-Delaware Corporation immediately prior to filing this Certificate is Florida.
4. The name of the Delaware Corporation as set forth in the Certificate of Incorporation is CallMiner, Inc.
5. The conversion of the Non-Delaware Corporation into the Delaware Corporation was approved by the Corporation in accordance with Delaware General Corporation Law § 265(h).
6. This Certificate of Conversion shall be effective on June 21, 2006.

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the converting Non-Delaware Corporation has executed this Certificate on the 21st day of June, 2006.



Jeffrey A. Gallino, President

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:17 PM 06/21/2006
FILED 04:51 PM 06/21/2006
SRV 060598726 - 4178909 FILE

Delaware

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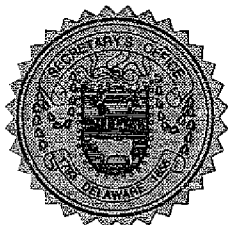
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF CERTIFICATE OF INCORPORATION OF "CALLMINER, INC." FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF JUNE, A.D. 2006, AT 4:51 O'CLOCK P.M.

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

4178909 8100V

060598726



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4845939

DATE: 06-22-06

TRADEMARK
REEL: 003632 FRAME: 0445

CERTIFICATE OF INCORPORATION
OF
CALLMINER, INC.

- I. The name of this corporation is CallMiner, Inc. (the "Corporation").
- II. The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, in the County of New Castle. The name of its registered agent at such address is Corporation Service Company.
- III. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.
- IV. The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 52,000,000 shares of Common Stock, \$0.001 par value per share ("Common Stock"), and (ii) 42,064,928 shares of Preferred Stock, \$0.001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation. Unless otherwise indicated, references to "Sections" or "Subsections" in this Article refer to sections and subsections of this Article IV.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held 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) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

B. PREFERRED STOCK

A total of 19,612,498 shares of the Corporation's Preferred Stock shall be designated as "Series A Preferred Stock", and a total of 22,452,430 shares of the Corporation's Preferred Stock shall be designated as "Series B Preferred Stock".

The Preferred Stock shall have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations.

1. Dividends.

The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to (i) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock, and (B) the number of shares of Common Stock issuable upon conversion of such share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend, or (ii) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) and (B) multiplying such fraction by an amount equal to the applicable Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section B.1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend. The "Series A Original Issue Price" shall mean \$0.30696687 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The "Series B Original Issue Price" shall mean \$0.445386129 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. The "Original Issue Price" shall mean the Series A Original Issue Price or the Series B Original Issue Price, as applicable.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, or any Deemed Liquidation Event (as defined below)(each, a "Liquidation Event"), the holders of shares of Series A Preferred Stock and Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock or any other class of securities ranking on liquidation junior to the Series A Preferred Stock and Series B Preferred Stock by reason of their ownership thereof, an amount per share equal to the applicable Original Issue Price, plus any dividends declared but unpaid thereon. If upon any such

liquidation, dissolution or winding up of the Corporation the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock and Series B Preferred Stock the full amount to which they shall be entitled under this Subsection B.2.1, the holders of shares of Series A Preferred Stock and Series B Preferred Stock shall share ratably in any distribution of the assets available for distribution, on a *pari passu* basis between the holders of Series A Preferred Stock and Series B Preferred Stock on the basis of the full liquidation preference payable with respect to such Series A Preferred Stock and Series B Preferred Stock if such liquidation preference was paid in full.

2.2 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, or any Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock and Series B Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series A Preferred Stock, Series B Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation. The aggregate amount which a holder of a share of Preferred Stock is entitled to receive under Subsections B.2.1 and B.2.2 is hereinafter referred to as the "**Preferred Liquidation Amount.**"

2.3 Deemed Liquidation Event.

2.3.1 The following events shall be deemed to be a liquidation of the Corporation for purposes of Subsection B.2 (a "**Deemed Liquidation Event**"), unless the holders of seventy-five percent (75%) of the outstanding Preferred Stock, voting as a single class on an as-if converted basis, elect otherwise by written notice given to the Corporation at least twenty (20) days prior to the effective date of any such event:

(a) a merger, consolidation, or reorganization in which (i) the Corporation is a constituent party or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger, consolidation or reorganization involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock which represent, immediately following such merger, consolidation or reorganization at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection B.2.3.1(a), all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged);

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, except where such sale, lease, transfer or other disposition is to a wholly owned subsidiary of the Corporation; or

(c) the issuance or sale of securities, in any transaction or series of related transactions, to any person or entity or affiliated group of persons or entities, that results in the transfer of fifty percent (50%) or more of the outstanding voting power of the Corporation; provided, however, that any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof shall not be a Deemed Liquidation Event.

2.3.2 The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection B.2.3.1(a) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the shareholders of the Corporation shall be allocated among and paid to the holders of capital stock of the Corporation in accordance with Subsection B.2 above.

2.3.3 The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm, or other entity.

2.3.4 In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law within sixty (60) days after such Deemed Liquidation Event, then (A) the Corporation shall deliver a written notice to each holder of Preferred Stock no later than the sixtieth (60th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of such shares of Preferred Stock, and (B) if the holders of a majority of the then outstanding shares of Series B Preferred Stock, acting as a separate class, so request in a written instrument delivered to the Corporation not later than seventy-five (75) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors) (the "Net Proceeds") to redeem, to the extent legally available therefor, on the ninetieth (90th) day after such Deemed Liquidation Event (the "Liquidation Redemption Date"), all outstanding shares of Preferred Stock at a price per share equal to the applicable liquidation amount. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem a pro rata portion of each holder's shares of Preferred Stock, to the fullest extent of such Net Proceeds or such lawfully available funds, as the case may be, and, where such redemption is limited by the amount of

lawfully available funds, the Corporation shall redeem in accordance with the foregoing the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Subsection B.6.1 through B.6.6 below shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this Subsection B.3.3. Prior to the distribution or redemption provided for in this Subsection B.2.3, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in the ordinary course of business.

2.4 Notices. The Corporation shall notify the holders of Preferred Stock in writing (the "**Liquidation Event Notice**") not later than 30 days before the stockholders' meeting is called to approve the Deemed Liquidation Event, if any, or within 30 days before closing of the transaction, whichever is earlier, and shall also notify the holders in writing of the final approval of the transaction. The first of these notices shall describe the material terms and conditions of the pending transaction and the provisions of this Section, and the Corporation shall thereafter give such holders prompt notice of any material changes.

2.5 Valuation of Consideration. In the event of a Liquidation Event, actual or deemed, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value, and subject to Subsection B.2.5(ii) below, the Board of Directors of the Corporation shall promptly engage an independent appraiser experienced in the business of evaluating or appraising the market value of stock acceptable to the holders of Preferred Stock to determine the fair market value of the assets to be distributed to the holders of the Preferred Stock and Common Stock. The appraiser shall be paid by the Corporation. The Corporation shall, upon receipt of such appraiser's valuation, give prompt written notice to each holder of Preferred Stock and Common Stock of the appraiser's valuation. Any securities shall be valued as follows:

2.5.1 Securities not subject to investment letter or other similar restrictions on free marketability:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) business days prior to the closing of the transaction

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) business days prior to the closing of the transaction; or

(C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of a majority of the outstanding shares of the Preferred Stock, with the discounts described below for lack of marketability and minority status, provided that if the Corporation and the holders of a majority of the outstanding shares of the Preferred Stock are unable to reach agreement within 30 days of the date of the Liquidation Event Notice, then by independent appraisal by an appraiser experienced in the business of evaluating or appraising the market value of stock. The appraiser shall be hired and paid by the

Corporation and acceptable to the holders of a majority of the outstanding shares of Preferred Stock.

If the parties cannot agree on an appraiser within 45 days of the date of the Liquidation Event Notice, each of the Corporation and the holders of a majority of the Preferred Stock shall designate an appraiser experienced in the business of evaluating or appraising the market value of stock. The two designated appraisers (the "Initial Appraisers") shall, within 60 days, appraise the securities as of the latest possible date. If the difference between the resulting appraisals is less than ten percent (10%), the average of the appraisals will be deemed the fair market value; otherwise, the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), also experienced in a manner similar to the Initial Appraisers. If they fail to select the Additional Appraiser within 30 days, either party may apply, after written notice to the other, to any judge of any court of general jurisdiction in Lee County, Florida, for the appointment of the Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the securities, and this value will be the appraised fair market value. Each party shall pay the expenses and fees of the appraiser selected by him or it (ratably based on share ownership for the holders of Preferred Stock), and if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

2.5.2 The method of valuation of any securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above to reflect the approximate fair market value, as mutually determined by the Corporation and the holders of a majority of the outstanding shares of Preferred Stock, provided that if the Corporation and the holders of a majority of the outstanding shares of the Preferred Stock are unable to reach agreement, then by independent appraisal in the same manner as described above.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

3.2 Election of Directors

3.2.1 The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the "Series A Directors").

3.2.2 The holders of record of the shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "Series B Director" and, together with the Series A Directors, the "Preferred Directors").

3.2.3 The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation, who shall be the then Chief Executive Officer of the Corporation.

3.2.4 The holders of record of the shares of Common Stock and the holders of record of the shares of Preferred Stock, voting together as a single class, shall be entitled to elect one (1) director of the Corporation, who shall be an outside director with relevant industry experience to further the Corporation's business plan.

Any director may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class(es) or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection B.3.2.

3.3 Separate Vote of Series A Preferred Stock. For so long as at least 2,623,000 shares of Series A Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series A Preferred Stock after the date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series A Preferred Stock, voting as a separate class, shall be necessary for effecting or validating any action that will (whether by merger, recapitalization, reclassification, consolidation or otherwise):

3.3.1 amend this Certificate of Incorporation or the Corporation's Bylaws in a manner that adversely affects the holders of the Series A Preferred Stock; or

3.3.2 alter or change the rights, preferences or privileges of the Series A Preferred Stock so as to adversely affect such shares.

3.4 Separate Vote of Series B Preferred Stock. For so long as at least 5,613,000 shares of Series B Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series B Preferred Stock after the date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series B Preferred Stock, voting as a separate class, shall be necessary for effecting or validating any action that will (whether by merger, recapitalization, reclassifications, consolidation or otherwise):

3.4.1 create any new class or series of shares having rights, preferences or privileges senior to or on a parity with the Series B Preferred Stock;

3.4.2 amend this Certificate of Incorporation or the Corporation's Bylaws in a manner that adversely affects the holders of the Series B Preferred Stock; or

3.4.3 alter or change the rights, preferences or privileges of the Series B Preferred Stock so as to adversely affect such shares.

3.5 Separate Vote of Preferred Stock. For so long as at least 8,236,000 shares of Preferred Stock (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Preferred Stock after the date hereof) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least seventy-five percent (75%) of the outstanding Preferred Stock, voting as a single class on an as-if converted basis, shall be necessary for effecting or validating any action that (whether by merger, recapitalization, reclassifications, consolidation or otherwise):

3.5.1 alters or changes the rights, preferences or privileges of the Preferred Stock so as to adversely affect such shares;

3.5.2 increases or decreases the authorized capital stock of the Corporation;

3.5.3 creates any new class or series of shares having rights, preferences or privileges senior to or on a parity with the Preferred Stock;

3.5.4 amends this Certificate of Incorporation or the Corporation's Bylaws in a manner that adversely affects the holders of the Preferred Stock;

3.5.5 redeems or repurchases shares (excluding the repurchase of Common Stock upon termination of an officer, employee, director or consultant pursuant to an option agreement or restricted stock purchase agreement approved by the Board of Directors, including the Preferred Directors);

3.5.6 authorizes or obligates the Corporation to pay any dividend or make any other distribution in respect of the Corporation's capital stock (other than a dividend payable solely in shares of Common Stock);

3.5.7 increases the number of shares of Common Stock issuable pursuant to the Corporation's stock option plan or adopts any new employee stock purchase plan, stock incentive compensation or similar stock option plan;

3.5.8 changes the number of directors or the composition of the Board of Directors other than as contemplated in the Corporation's Bylaws;

3.5.9 effects a Deemed Liquidation Event or other transaction that constitutes any other liquidation contemplated by Subsection B.2;

3.5.10 results in the issuance of any securities by a subsidiary of the Corporation to any third party;

3.5.11 effects the sale, assignment or transfer of any material assets of the Corporation;

3.5.12 results in the declaration of voluntary bankruptcy or effects an assignment for the benefit of creditors;

3.5.13 create, or authorize the creation of, or issue, or authorize the issuance of, or permit any subsidiary to take any such action, any debt security other than equipment leases, bank lines of credit, or other debt that does not exceed \$100,000 in the aggregate, including, without limitation, any debt security which by its terms is convertible into or exchangeable for any equity security of the Corporation and any security of the Corporation which is a combination of debt and equity, other than as approved by the Board of Directors, including the approval of the Preferred Directors; or

3.5.14 approve or grant any severance benefits or similar type benefits or employment agreements which are not terminable at will and which were not unanimously approved by the Preferred Directors.

4. Optional Conversion.

The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

4.1 Right to Convert.

4.1.1 Conversion Ratio.

(a) Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" shall initially be equal to \$0.30696687. Such initial Series A Conversion

Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(b) Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series B Original Issue Price by the Series B Conversion Price (as defined below) in effect at the time of conversion. The "Series B Conversion Price" shall initially be equal to \$0.445386129. Such initial Series B Conversion Price, and the rate at which shares of Series B Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The "Conversion Price" shall be used to refer to the Series A Conversion Price or the Series B Conversion Price, as applicable.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Preferred Stock pursuant to Subsection B.6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock, unless the liquidation payments are not paid on such payment date, in which case the Conversion Rights for such shares shall continue until those payments are paid in full.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on

which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof, a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, and cash as provided in Subsection B.4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and payment of any declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take 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 purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, 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 Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the applicable Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Subsection B.4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Series A Conversion Price and Series B Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article IV, the following definitions shall apply:

(a) **“Option”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities

(b) **“Series B Original Issue Date”** shall mean June 22, 2006.

(c) **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) **“Additional Shares of Common Stock”** shall mean all shares of Common Stock issued (or, pursuant to Subsection B.4.4.3 below, deemed to be issued) by the Corporation after the Series B Original Issue Date, other than the following shares of Common Stock, and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively **“Exempted Securities”**):

- (i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Preferred Stock;
- (ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection B.4.5, 4.6, 4.7 or 4.8 below;
- (iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries

pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, including all of the Preferred Directors;

- (iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security that has been approved by the Board of Directors and, if issued after the Series B Original Issue Date, by all of the Preferred Directors; or
- (v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including all of the Preferred Directors.

4.4.2 No Adjustment of Series A Conversion Price or Series B Conversion Price. No adjustment in the Series A Conversion Price or the Series B Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection B.4.4.5) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least seventy-five percent (75%) of the then outstanding shares of Preferred Stock, voting together as a single class on an as-if converted basis, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of

the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price or Series B Conversion Price pursuant to the terms of Subsection B.4.4.4 below are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the applicable Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the applicable Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Series A Conversion Price or Series B Conversion Price pursuant to the terms of Subsection B.4.4.4 below (either because the consideration per share (determined pursuant to Subsection B.4.4.4 hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series B Original Issue Date), are revised after the Series B Original Issue Date either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection B.4.4.3(a) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Series A Conversion Price or the Series B Conversion Price pursuant to the terms of Subsection B.4.4.4

below, the applicable Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Series A Conversion Price or Series B Conversion Price provided for in this Subsection B.4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection B.4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Series A Conversion Price or Series B Conversion Price that would result under the terms of this Subsection B.4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the applicable Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Series A Conversion Price and Series B Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series B Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection B.4.4.3), without consideration or for a consideration per share less than the Series A Conversion Price or Series B Conversion Price in effect immediately prior to such issue, then the applicable Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

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

(a) "CP₂" shall mean the applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(b) "CP₁" shall mean the applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection B.4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

- (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and
- (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection B.5.4.3, relating to Options and Convertible Securities, shall be determined by dividing

- (i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the

case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

- (ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Conversion Price or Series B Conversion Price pursuant to the terms of Subsection B.4.4.4 above 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 first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series B Original Issue Date effect a subdivision of the outstanding Common Stock, the Series A Conversion Price and Series B Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series B Original Issue Date combine the outstanding shares of Common Stock, the Series A Conversion Price and the Series B Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this Subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price and Series B Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

- (1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and
- (2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price and Series B Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price shall be adjusted pursuant to this Subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Subsection B.1 do not apply to such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection B.2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections B.4.5, B.4.6 or B.4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one

share of the applicable series of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in Subsection B.4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in Subsection B.4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price or Series B Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price or Series B Conversion Price pursuant to Subsection B.4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the applicable series of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the applicable series of Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price and Series B Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock and the Series B Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to

exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least \$2.227 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares after the Series B Original Issue Date), in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$20 million of gross proceeds to the Corporation (a "Qualifying Public Offering") or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least seventy-five percent (75%) of the then outstanding shares of Preferred Stock, voting together as a single class on an as-if converted basis (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "Mandatory Conversion Time"), (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to Subsection B.5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) 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 Subsection B.5. At the Mandatory Conversion Time, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the last sentence of this Subsection B.5.2. 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, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as

provided in Subsection B.4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted.

5.3 Effect of Mandatory Conversion. All shares of Preferred Stock shall, from and after the Mandatory Conversion Time, no longer be deemed to be outstanding and, notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares on or prior to such time, all rights with respect to such shares shall immediately cease and terminate at the Mandatory Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, 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 Preferred Stock accordingly.

5A. Special Mandatory Conversion.

5A.1 Trigger Event. In the event that any holder of shares of Preferred Stock does not participate in a Qualified Financing (as defined below) by purchasing in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (provided that the Corporation has sent to each holder of Preferred Stock at least 20 days written notice of, and the opportunity to purchase its Pro Rata Amount (as defined below) of, the Qualified Financing), such holder's Pro Rata Amount, then the Applicable Portion (as defined below) of the shares of Preferred Stock held by such holder shall automatically, and without any further action on the part of such holder, be converted into shares of Common Stock at the applicable Conversion Price in effect immediately prior to the consummation of such Qualified Financing, effective upon, subject to, and concurrently with, the consummation of the Qualified Financing. For purposes of determining the number of shares of Preferred Stock owned by a holder, and for determining the number of Offered Securities (as defined below) a holder of Preferred Stock has purchased in a Qualified Financing, all shares of Preferred Stock held by Affiliates (as defined below) of such holder shall be aggregated with such holder's shares and all Offered Securities purchased by Affiliates of such holder shall be aggregated with the Offered Securities purchased by such holder (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons). Such conversion is referred to as a "Special Mandatory Conversion". Notwithstanding the foregoing, the provisions of this Subsection B.5A.1 may be waived by unanimous consent of the Preferred Directors.

5A.2 Procedural Requirements. Upon a Special Mandatory Conversion, each holder of shares of Preferred Stock converted pursuant to Subsection B.5A.1 shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) 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 Subsection B.5A and a new certificate for the number of shares, if any, of Preferred Stock represented by such surrendered certificate and not converted pursuant to Subsection B.5A.1.

All rights with respect to the Preferred Stock converted pursuant to Subsection B.5A.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor (or lost certificate affidavit and agreement), to receive the items provided for in the last sentence of this Subsection B.5A.2. 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, her or its attorney duly authorized in writing. As soon as practicable after the Special Mandatory Conversion and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock so converted, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection B.4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted and a new certificate for the number of shares, if any, of Preferred Stock represented by such surrendered certificate and not converted pursuant to Subsection B.5A.1.

5A.3 Effect of Special Mandatory Conversion. The Applicable Portion of shares of Preferred Stock shall, from and after the time of the Special Mandatory Conversion, no longer be deemed to be outstanding and, notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares on or prior to such time, all rights with respect to such shares shall immediately cease and terminate at the time of the Special Mandatory Conversion, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, 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 Preferred Stock accordingly.

5A.4 Definitions. For purposes of Subsection B.5A, the following definitions shall apply:

5A.4.1 "Affiliate" shall mean, with respect to any holder of shares of Preferred Stock, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, or member of such holder and any venture capital fund now or hereafter existing of which the holder is a partner or member which is controlled by or under common control with one or more general partners (or members thereof) of such holder or shares the same management company or member thereof with such holder.

5A.4.2 "Applicable Portion" shall mean, with respect to any holder of (i) shares of Series A Preferred Stock, a number of shares of Series A Preferred Stock calculated by multiplying the aggregate number of shares of Series A Preferred Stock held by such holder immediately prior to a Qualified Financing by a fraction, the numerator of which is equal to the amount, if positive, by which such holder's Pro Rata Amount exceeds the aggregate purchase

price actually paid by such holder, if any, for such Offered Securities in such Qualified Financing, and the denominator of which is equal to such holder's Pro Rata Amount, and (ii) shares of Series B Preferred Stock, a number of shares of Series B Preferred Stock calculated by multiplying the aggregate number of shares of Series B Preferred Stock held by such holder immediately prior to a Qualified Financing by a fraction, the numerator of which is equal to the amount, if positive, by which such holder's Pro Rata Amount exceeds the aggregate purchase price actually paid by such holder, if any, for such Offered Securities in such Qualified Financing, and the denominator of which is equal to such holder's Pro Rata Amount.

5A.4.3 "**Offered Securities**" shall mean the equity securities of the Corporation set aside by the Board of Directors of the Corporation for purchase by holders of outstanding shares of Preferred Stock in connection with a Qualified Financing, and offered to such holders.

5A.4.4 "**Pro Rata Amount**" shall mean, with respect to any holder of Preferred Stock, the amount equal to the lesser of (a) the aggregate purchase price of a number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of outstanding Common Stock owned by such holder, and the denominator of which is equal to the aggregate number of outstanding shares of Common Stock (for the purpose of this definition, treating all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such Qualified Financing or upon conversion of Convertible Securities outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such Qualified Financing as outstanding), (b) the aggregate purchase price of the maximum number of Offered Securities that such holder is permitted by the Corporation to purchase in such Qualified Financing, after giving effect to any cutbacks or limitations established by the Board of Directors and applied on a pro rata basis to all holders of Preferred Stock and (c) the greater of (i) the aggregate purchase price paid for the shares of Series A Preferred Stock and (ii) the aggregate purchase price paid for the shares of Series B Preferred Stock (which shall include, for purposes of this definition, the dollar amount of dividends on the Series A Preferred Stock that had been converted to shares of Series B Preferred Stock on the Series B Original Issue Date), in each case purchased by such holder on or before the Series B Original Issue Date.

5A.4.5 "**Qualified Financing**" shall mean any transaction involving the issuance or sale of equity securities of the Corporation after the Series B Original Issue Date which would result in the reduction of the Series B Conversion Price pursuant to the terms of the Certificate of Incorporation, unless the holders of at least a majority of the Board of Directors of the Corporation, including all of the Preferred Directors, elect that such transaction not be treated as a Qualified Financing for purposes of Subsection B.5A.

6. Redemption

6.1 Redemption. Shares of Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a per share price (the "**Redemption Price**") equal to the greatest of:

(i) the applicable Original Issue Price per share, plus all declared but unpaid dividends thereon,

(ii) an amount equal to (A) three times the Corporation's revenues for the most recent fiscal year (as set out in the Corporation's audited financial statements) divided by (B) the number of shares of Common Stock outstanding immediately prior to such Redemption (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of outstanding Options or upon conversion or exchange of outstanding Convertible Securities),

(iii) an amount equal to (A) ten times the Corporation's earnings before interest, taxes, depreciation and amortization for the most recent fiscal year (as calculated from the Corporation's audited financial statements) divided by (B) the number of shares of Common Stock outstanding immediately prior to such Redemption (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of outstanding Options or upon conversion or exchange of outstanding Convertible Securities), and

(iv) the fair market value of a share of Preferred Stock to be redeemed under this Subsection B.6.1 as determined by an independent appraiser selected as provided in Subsection B.2.5.1, but without applying discounts for minority status or lack of marketability,

payable in three annual installments commencing on the fifth, sixth and seventh anniversary of the Series B Original Issue Date upon a receipt by the Corporation at any time from the holders of at least seventy-five percent (75%) of the then outstanding shares of Preferred Stock of written notice requesting redemption of all shares of Preferred Stock (the date of each such installment being referred to as a "Redemption Date"). On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Preferred Stock owned by each holder, that number of outstanding shares of Preferred Stock determined by dividing (i) the total number of shares of Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of Preferred Stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor, subject to Subsection B.6.5 below.

6.2 Redemption Notice. Written notice of the mandatory redemption (the "Redemption Notice") shall be sent to each holder of record of Preferred Stock not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

(a) the number of shares of Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

- (b) the Redemption Date and the Redemption Price;
- (c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection B.4.1); and
- (d) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

6.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Subsection B.4, shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

6.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

6.5 Delivery of Notes on Failure to Redeem for Insufficient Cash Flow. If a Redemption Shortfall (as defined below) occurs because the Corporation does not have enough cash legally available to redeem the shares as required herein, the Corporation shall, unless waived in writing by the holders of at least 75% of the Preferred Stock, pay the amount of the Redemption Shortfall with a promissory note that matures in one year and accrues interest at a rate of 10% per annum, compounded quarterly and payable on maturity, and is otherwise in a form satisfactory to the holders of 75% of the Preferred Stock.

6.6 Election of Majority of Directors on Failure to Redeem. Notwithstanding Subsection 3.2 of this Certificate of Incorporation, if the Corporation fails to make a timely and full cash redemption payment (a "Redemption Shortfall") with respect to the Preferred Stock that it is obligated to make under Subsection B.6, whether or not the payment is legally permitted and whether or not the Corporation evidences the Redemption Shortfall with notes, (1) the

Corporation will give within ten (10) days of the Redemption Shortfall written notice to each holder of Preferred Stock; and (2) if the Redemption Shortfall is not cured within thirty (30) days of its occurrence, the holders of the Preferred Stock will have a special right, exclusively and voting separately as a class, to elect a majority of the directors serving on the Board of Directors, if not otherwise entitled to do so. The holders of 75% of the Preferred Stock may exercise this right at a special meeting, at any annual or special meeting of shareholders, and by written consent in lieu of a special meeting. The special voting right will continue until the Corporation cures the Redemption Shortfall, when the special right will cease to exist, subject to re-vesting if another Redemption Shortfall occurs. When the special voting right provided by this Subsection terminates, the term of any additional directors elected by the holders of Preferred Stock will terminate. This special voting right does not affect the rights of the Preferred Stock to exercise other rights or remedies provided in this Certificate of Incorporation or by agreement, by law or otherwise, on the occurrence of Redemption Shortfall.

7. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock which are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption.

8. Waiver. Any of the rights, powers, preferences and other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the holders of at least seventy-five percent (75%) of the shares of Preferred Stock then outstanding.

9. Notices. Any notice required or permitted by the provisions of this Article IV Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

V. Subject to any additional vote required by the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

VI. Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

VII. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

VIII. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept 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.

IX. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the Delaware General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

X. The following indemnification provisions shall apply to the persons enumerated below.

1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnified Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article X, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

2. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article X or otherwise.

3. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article X is not paid in full within 30 days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation

shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law

4. Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney's fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

5. Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorney's fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

6. Non-Exclusivity of Rights. The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, the Corporation's Bylaws, any agreement, any vote of stockholders or disinterested directors or otherwise.

7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other Corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

8. Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article X; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article X.


9. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights

provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

XI. The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

CALLMINER, INC.
CERTIFICATE OF INCORPORATION
SIGNATURE PAGE

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 21st day of June, 2006.

By: 
Jeffrey A. Gallino, President

LIBC/2761705 2

RECORDED: 10/02/2007

TRADEMARK
REEL: 003632 FRAME: 0475