

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	06/29/2007

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Verdiem Corporation		06/29/2007	CORPORATION: WASHINGTON

RECEIVING PARTY DATA

Name:	Verdiem Corporation
Street Address:	1601 Second Avenue
Internal Address:	Suite 701
City:	Seattle
State/Country:	WASHINGTON
Postal Code:	98101-3529
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	3242173	VERDIEM

CORRESPONDENCE DATA

Fax Number: (650)493-6811
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 650-493-9300
 Email: sschor@wsgr.com
 Correspondent Name: Matthew Kuykendall/WILSON SONSINI ET AL
 Address Line 1: 650 Page Mill Road
 Address Line 4: Palo Alto, CALIFORNIA 94304-1050

ATTORNEY DOCKET NUMBER:	34146-TM1001
NAME OF SUBMITTER:	Matthew J. Kuykendall

CH \$40.00 3242173

Signature:

/Matthew J. Kuykendall/

Date:

03/07/2008

Total Attachments: 33

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UNITED STATES OF AMERICA

The State of Washington



Secretary of State

CERTIFICATE OF MERGER

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that documents meeting statutory requirements have been filed and processed with the Secretary of State merging the listed "Merging Entities" into:

VERDIEM CORPORATION (DE)

DE Profit Corporation

UBI: 000-000-000

Filing Date: June 29, 2007

Merging Entities:

602-541-879

VERDIEM CORPORATION



Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

A handwritten signature in cursive script that reads "Sam Reed".

Sam Reed, Secretary of State

TRADEMARK

REEL: 003738 FRAME: 0599

FILED
SECRETARY OF STATE

JUN 29 2007

STATE OF WASHINGTON

ARTICLES OF MERGER
OF
VERDIEM CORPORATION
a Washington corporation
AND
VERDIEM CORPORATION (DE)
a Delaware corporation

Pursuant to the provisions of RCW 23B.11.050, the following Articles of Merger are executed for the purpose of merging Verdiem Corporation, a Washington corporation (the "Disappearing Corporation"), into Verdiem Corporation (DE), a Delaware corporation (the "Surviving Corporation").

1. The Agreement and Plan of Merger providing for the merger of the Disappearing Corporation with and into the Surviving Corporation (the "Merger") is attached hereto as Exhibit A.

2. The Agreement and Plan of Merger was duly approved by the sole stockholder of the Surviving Corporation pursuant to the provisions of the Delaware General Corporation Law and was duly approved by the shareholders of the Disappearing Corporation pursuant to RCW 23B.11.030.

(Remainder of Page Intentionally Left Blank)

The undersigned authorized representatives of the Disappearing Corporation and the Surviving Corporation hereby execute and acknowledge these Articles of Merger.

Dated: 6/29/07

VERDIEM CORPORATION, a Washington corporation

By: Kevin J. Klustner
Kevin Klustner
President

Dated: 6/29/07

VERDIEM CORPORATION (DE), a Delaware corporation

By: Kevin J. Klustner
Kevin Klustner
President

Exhibit A

Agreement and Plan of Merger

AGREEMENT AND PLAN OF MERGER
OF VERDIEM CORPORATION (DE),
A DELAWARE CORPORATION,
and
VERDIEM CORPORATION,
A WASHINGTON CORPORATION

This Agreement and Plan of Merger (this "*Agreement*"), dated as of June 29, 2007 is made by and between Verdiem Corporation, a Washington corporation ("*Verdiem-Washington*"), and Verdiem Corporation (DE), a Delaware corporation ("*Verdiem-Delaware*" and also the "*Surviving Corporation*"). Verdiem-Delaware and Verdiem-Washington are sometimes referred to in this Agreement as the "*Constituent Corporations*."

RECITALS

A. Verdiem-Delaware is a corporation duly organized and validly existing under the laws of the State of Delaware and has an authorized capital of 1,000 shares of designated common stock, par value \$0.001 per share (the "*Verdiem-Delaware Common Stock*"). As of the date of this Agreement, 1,000 shares of Verdiem-Delaware Common Stock are issued and outstanding.

B. Verdiem-Washington is a corporation duly organized and validly existing under the laws of the State of Washington and has an authorized capital of 200,000,000 shares, 32,756,125 of which are designated common stock, par value \$0.04 per share (the "*Verdiem-Washington Common Stock*"), and 25,399,032 of which are designated preferred stock, par value \$0.04 per share, of which 52,261 shares are designated Series A preferred stock (the "*Verdiem-Washington Series A Preferred Stock*"), 9,550,442 shares are designated Series B preferred stock (the "*Verdiem-Washington Series B Preferred Stock*"), 4,571,428 shares are designated Series C preferred stock (the "*Verdiem-Washington Series C Preferred Stock*") and 3,260,870 shares are designated Series D preferred stock (the "*Verdiem-Washington Series D Preferred Stock*"). As of the date of this Agreement, 9,055,949 shares of Verdiem-Washington Series B Preferred Stock are issued and outstanding, 3,885,713 shares of Verdiem-Washington Series C Preferred Stock are issued and outstanding, and 3,260,869 shares of Verdiem-Washington Series D Preferred Stock are issued and outstanding.

C. Verdiem-Washington was a party to the Plan of Merger dated September 23, 2005 between Verdiem-Washington and Verdiem Corporation, an Oregon corporation (formerly EZConserve, Inc.) ("*Verdiem-Oregon*"), pursuant to which Verdiem-Oregon merged with and into the Company (the "*Washington Reincorporation*"), and the separate existence of Verdiem-Oregon ceased, and the Company succeeded to, without other transfer, all of the assets, rights, powers, property, debts, liabilities and obligations of Verdiem-Oregon in the manner set forth in such agreement and the Revised Code of Washington, and each holder of ten (10) shares of Verdiem-Oregon capital stock received one share of the same class and series of Verdiem Washington capital stock.

D. Prior to the Washington Reincorporation, the Board of Directors of Verdiem-Oregon approved a 4:1 reverse stock split of Verdiem-Oregon's outstanding securities (the "*4:1 Reverse Stock Split*") on May 20, 2003 and the shareholders of Verdiem-Oregon approved the 4:1 Reverse Stock Split on June 4, 2003. However, it is unclear whether the 4:1 Reverse Stock Split was properly effected upon the filing of the Verdiem-Oregon Amended and Restated Articles of Incorporation on June 24, 2003 (the "*June 2003 Oregon Articles*") in compliance with Oregon law, as a scrivener's error resulted in the omission of the operative language effecting the 4:1 Reverse Stock Split in the June 2003 Oregon Articles. If the 4:1 Reverse Stock Split was not properly effected, Verdiem-Oregon may have reduced its

authorized shares of Common Stock and Series A Preferred Stock below the outstanding shares of such class and series of stock upon filing the June 2003 Oregon Articles and it is unclear what securities or other rights that the holders of Verdiem-Oregon Common Stock and Verdiem-Oregon Series A Preferred Stock would be entitled if the filing of the June 2003 Oregon Articles failed to effect the 4:1 Reverse Stock Split and reduced the number of shares of authorized stock below the then outstanding shares of Verdiem-Oregon. It is further unclear what interest such holders may hold in Verdiem-Washington following the Washington Reincorporation. However, the board of directors and shareholders of Verdiem-Washington have determined (i) that the persons listed on Exhibit A hereto are the holders of Verdiem-Washington Common Stock, an inchoate right to Verdiem-Washington Common Stock or a combination of the foregoing (the "*Verdiem-Washington Common Stock Rights*") in the proportionate amount provided on Exhibit A (each a "*Verdiem-Washington Common Holder*") and (ii) that the persons listed on Exhibit B hereto are the holders of Verdiem-Washington Series A Preferred Stock, an inchoate right to Verdiem-Washington Series A Preferred Stock or a combination of the foregoing (the "*Verdiem-Washington Series A Preferred Stock Rights*") in the proportionate amount provided on Exhibit B (each a "*Verdiem-Washington Series A Holder*").

E. The board of directors of Verdiem-Washington has determined that, for the purpose of effecting the reincorporation of Verdiem-Washington in the State of Delaware (the "*Reincorporation*"), it is advisable and in the best interests of Verdiem-Washington and its shareholders that Verdiem-Washington merge with and into Verdiem-Delaware according to the terms and conditions, but subject to the limitations, set forth in this Agreement. The sole director of Verdiem-Delaware has determined that, for the purpose of effecting the Reincorporation, it is advisable and in the best interest of Verdiem-Delaware and its stockholder that Verdiem-Washington merge with and into Verdiem-Delaware according to the terms and conditions, but subject to the limitations, set forth in this Agreement.

F. The sole director of Verdiem-Delaware and the board of directors of Verdiem-Washington have approved this Agreement and have directed that this Agreement be submitted to a vote of Verdiem-Delaware's and Verdiem-Washington's respective stockholders and executed by the undersigned officers.

AGREEMENT

In consideration of the mutual agreements and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Verdiem-Delaware and Verdiem-Washington hereby agree, according to the terms and conditions, but subject to the limitations, hereinafter set forth, as follows:

1. Merger

1.1 **Merger.** In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the Washington Business Corporation Act, Verdiem-Washington shall be merged with and into Verdiem-Delaware (the "*Merger*"); the separate existence of Verdiem-Washington shall cease, Verdiem-Delaware shall be the surviving corporation and shall change its name to Verdiem Corporation.

1.2 Filing and Effectiveness. The Merger shall become effective upon completion of the following actions:

(a) Adoption and approval of this Agreement and the Merger by the respective stockholders of each Constituent Corporation in accordance with the applicable requirements of the Delaware General Corporation Law and the Washington Business Corporation Act;

(b) The satisfaction or waiver of all of the conditions precedent to the consummation of the Merger as specified in this Agreement;

(c) The filing with the Secretary of State of Delaware of an executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law; and

(d) The filing with the Secretary of State of Washington of executed Articles of Merger meeting the requirements of 23B.11.050 of the Washington Business Corporation Act.

The date and time when the Merger becomes effective is referred to in this Agreement as the "*Effective Date of the Merger.*"

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Verdiem-Washington shall cease, and Verdiem-Delaware, as the surviving corporation, (a) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (b) shall be subject to all actions previously taken by its and Verdiem-Washington's board of directors, (c) shall succeed, without other transfer, to all of the assets, rights, powers and property of Verdiem-Washington in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (d) shall continue to be subject to all of the debts, liabilities and obligations of Verdiem-Delaware as constituted immediately prior to the Effective Date of the Merger and (e) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Verdiem-Washington in the same manner as if Verdiem-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the Washington Business Corporation Act.

2. Charter Documents, Directors and Officers

2.1 Certificate of Incorporation. The Certificate of Incorporation of Verdiem-Delaware as in effect immediately prior to the Effective Date of the Merger shall be amended and restated in its entirety in the form of the Amended and Restated Certificate of Incorporation attached hereto as **Exhibit C** and shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Verdiem-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors of Verdiem-Delaware, effective upon the Effective Date of the Merger, shall be the directors of Verdiem-Washington and shall serve until their successors shall have been duly elected and qualified or as otherwise provided by law, the Amended and Restated Certificate of Incorporation of Verdiem-Delaware, or the Bylaws of Verdiem-Delaware. The officers of Verdiem-Delaware immediately prior to the Effective Date of the Merger shall continue to be

the officers of Verdiem-Delaware, effective upon the Effective Date of the Merger, and shall hold such offices until their successors shall have been duly elected and qualified or as otherwise provided by law, the Amended and Restated Certificate of Incorporation of Verdiem-Delaware, or the Bylaws of Verdiem-Delaware

3. Manner of Conversion of Stock

3.1 Verdiem-Washington Common Holders.

(a) Upon the Effective Date of the Merger, each Verdiem-Washington Common Holder's Verdiem-Washington Common Stock Rights, shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such rights or any other person, shall be converted into and exchanged for a number of fully paid and nonassessable shares of Common Stock, \$0.0001 par value per share, of the Surviving Corporation as determined by multiplying (i) the proportionate amount of Verdiem-Washington Common Stock Rights that such Verdiem Common Holder is entitled to as set forth opposite such Verdiem Common Holder's name on Exhibit A hereto, by (ii) 2,338,356. Each holder of an outstanding certificate purporting to represent shares of Verdiem-Washington Common Stock may, at such holder's option, surrender the same for cancellation to Wilson Sonsini Goodrich & Rosati, Professional Corporation, as exchange agent (the "*Exchange Agent*"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which such holders' Verdiem-Washington Common Stock Rights were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore purporting to represent shares of Verdiem-Washington Common Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock into which such Verdiem-Washington Common Stock Rights were converted in the Merger.

(b) The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

(c) Each certificate representing Common Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Verdiem-Washington held by the Verdiem-Washington Common Holders, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

(d) If any certificate representing Common Stock of the Surviving Corporation is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Surviving Corporation or the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation or the Exchange Agent that such tax has been paid or is not payable.

(e) No fractional shares of Common Stock of the Surviving Corporation will be issued pursuant hereto.

3.2 Verdiem-Washington Series A Holders.

(a) Upon the Effective Date of the Merger, each Verdiem-Washington Series A Holder's Verdiem-Washington Series A Preferred Stock Rights, shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such rights or any other person, shall be converted into and exchanged for a number of fully paid and nonassessable shares of Series A Preferred Stock, \$0.0001 par value per share, of the Surviving Corporation as determined by multiplying (i) the proportionate amount of Verdiem-Washington Series A Preferred Stock Rights that such Verdiem Series A Holder is entitled to as set forth opposite such Verdiem Series A Holder's name on Exhibit B hereto, by (ii) 52,261. Each holder of an outstanding certificate purporting to represent shares of Verdiem-Washington Series A Preferred Stock may, at such holder's option, surrender the same for cancellation to Wilson Sonsini Goodrich & Rosati, Professional Corporation, as exchange agent (the "*Exchange Agent*"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Series A Preferred Stock into which such holder's Verdiem-Washington Series A Preferred Stock Rights were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore purporting to represent shares of Verdiem-Washington Series A Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Series A Preferred Stock into which such Verdiem-Washington Series A Preferred Stock Rights were converted in the Merger.

(b) The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Series A Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

(c) Each certificate representing Series A Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Verdiem-Washington held by the Verdiem-Washington Series A Holders, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

(d) If any certificate representing Series A Preferred Stock of the Surviving Corporation is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Surviving Corporation or the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation or the Exchange Agent that such tax has been paid or is not payable.

(e) No fractional shares of Series A Preferred Stock of the Surviving Corporation will be issued pursuant hereto.

3.3 Verdiem-Washington Preferred Stock.

(a) Upon the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Verdiem-Washington Series B Preferred Stock, Verdiem-Washington Series C Preferred Stock or Verdiem-Washington Series D Preferred Stock, which shares are convertible into such number of shares of Verdiem-Washington Common Stock as set forth in the Verdiem-Washington Amended and Restated Articles of Incorporation, shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Verdiem-Delaware Series B Preferred Stock, Verdiem-Delaware Series C Preferred Stock or Verdiem-Delaware Series D Preferred Stock, as the case may be, \$0.0001 par value per share, having such rights, preferences and privileges as set forth in the Amended and Restated Certificate of Incorporation of the Surviving Corporation and shall initially be convertible into the same number of shares of the Surviving Corporation's Common Stock as such share of Verdiem-Washington Preferred Stock was convertible into shares of Verdiem-Washington Common Stock immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Amended and Restated Certificate of Incorporation of the Surviving Corporation. Each holder of an outstanding certificate representing shares of Verdiem-Washington Preferred Stock may, at such shareholder's option, surrender the same for cancellation to Wilson Sonsini Goodrich & Rosati, Professional Corporation, as exchange agent (the "*Exchange Agent*"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, into which such holders' shares of Verdiem-Washington Preferred Stock were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore representing shares of Verdiem-Washington Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Preferred Stock into which such shares of Verdiem-Washington Preferred Stock were converted in the Merger.

(b) The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, of the Surviving Corporation represented by such outstanding certificate as provided above.

(c) Each certificate representing Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock, as the case may be, of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Verdiem-Washington so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

(d) If any certificate for shares of Verdiem-Delaware Preferred Stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Surviving Corporation or the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation or the Exchange Agent that such tax has been paid or is not payable.

(e) No fractional shares of Preferred Stock of the Surviving Corporation will be issued pursuant hereto.

3.4 Verdiem-Washington Options and Warrants.

(a) Upon the Effective Date of the Merger, Verdiem-Delaware shall assume the obligations of the warrants of Verdiem-Washington. Each outstanding and unexercised warrant to purchase one share of Verdiem-Washington Series B Preferred Stock (each, a "*Right*") shall become a warrant to purchase one share of Verdiem-Delaware Series B Preferred Stock on the same terms and conditions and at an exercise price per share equal to the original exercise price applicable to any such warrant. This paragraph 3.4(a) shall not apply to Verdiem-Washington Common Stock Rights, Verdiem-Washington Series A Preferred Stock Rights or outstanding shares of Verdiem-Washington Preferred Stock. Such Verdiem-Washington Common Stock Rights, Verdiem-Washington Series A Preferred Stock Rights and Verdiem-Washington Preferred Stock are subject to paragraphs 3.1, 3.2 and 3.3 hereof, respectively.

(b) A number of shares of Verdiem-Delaware Common Stock and Verdiem-Delaware Series B Preferred Stock shall be reserved for issuance upon the exercise or conversion of Rights equal to the number of shares of Verdiem-Washington Common Stock and Verdiem-Washington Series B Preferred Stock so reserved immediately prior to the Effective Date of the Merger, including shares of Verdiem-Washington Common Stock reserved for issuance upon conversion of Verdiem-Washington Preferred Stock.

(c) Adjustment of the Rights will be governed by the terms of such Rights. The assumed Rights shall not entitle any holder thereof to a fractional share upon exercise or conversion. For purposes of determining any fractional share interests to which a holder of an assumed Right would otherwise be entitled upon exercise or conversion shall be aggregated on a holder by holder basis (but only with other similar Rights that have the same per share terms).

(d) Upon the Effective Date of the Merger, all outstanding stock options of Verdiem-Washington shall be terminated and shall not be assumed by Verdiem-Delaware.

3.5 Verdiem-Delaware Common Stock. Upon the Effective Date of the Merger, each share of Verdiem-Delaware Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Verdiem-Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.6 No Exchange of Certificates Required. Each outstanding certificate representing shares of Verdiem-Washington capital stock shall be deemed for all purposes to represent the number of shares of the appropriate class and series of Verdiem-Delaware's capital stock into which such shares of Verdiem-Washington capital stock were converted in the Merger. The registered owner on the books and records of Verdiem-Delaware of all such outstanding certificates shall have and be entitled to exercise all voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of Verdiem-Delaware represented by such outstanding certificates.

4. General

4.1 Covenants of Verdiem-Delaware. Verdiem-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of Washington and irrevocably appoint an agent for service of process; and

(b) Take such other actions as may be required by the Washington Business Corporation Act.

4.2 Further Assurances. From time to time, as and when required by Verdiem-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Verdiem-Washington such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Verdiem-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Verdiem-Washington and otherwise to carry out the purposes of this Agreement, and the officers and directors of Verdiem-Delaware are fully authorized in the name and on behalf of Verdiem-Washington or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the board of directors of either Verdiem-Washington or Verdiem-Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Verdiem-Washington or by the sole stockholder of Verdiem-Delaware, or by both.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) materially alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (b) alter or change any material term of the Amended and Restated Certificate of Incorporation of Verdiem-Delaware, or (c) materially alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series of capital stock of such Constituent Corporation.

4.5 Registered Office. The address of Verdiem-Delaware's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, DE 19808, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of Verdiem-Delaware at 1525 Fourth Avenue, Suite 700, Seattle, Washington 98101 and copies thereof will be furnished to any shareholder or stockholder of either Constituent Corporation, upon request and without cost.

4.7 Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

4.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

[Signature Page Follows]

The undersigned authorized representatives of the Constituent Corporation have executed and acknowledged this Agreement as of the date first set forth above.

VERDIEM CORPORATION (DE),
a Delaware corporation

By: Kevin Klustner
Kevin Klustner
President

VERDIEM CORPORATION,
a Washington corporation

By: Kevin Klustner
Kevin Klustner
President

EXHIBIT C

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
VERDIEM CORPORATION (DE)**

Verdiem Corporation (DE), a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), certifies that:

A. The name of the Corporation is Verdiem Corporation (DE). The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on June 20, 2007.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

C. The text of the Certificate of Incorporation is amended and restated to read as set forth in **EXHIBIT A** attached hereto.

IN WITNESS WHEREOF, Verdiem Corporation (DE) has caused this Amended and Restated Certificate of Incorporation to be signed by Kevin Klustner, a duly authorized officer of the Corporation, on June 29, 2007.

/s/ Kevin Klustner
Kevin Klustner
President and Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of the Corporation is Verdiem Corporation (the “Corporation”).

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is Seventy Eight Million Seven Hundred Forty Nine Thousand Two Hundred Eighty Five (78,749,285), consisting of Forty Five Million (45,000,000) shares of Common Stock, \$0.0001 par value per share, and Thirty Three Million Seven Hundred Forty Nine Thousand Two Hundred Eighty Five (33,749,285) shares of Preferred Stock, \$0.0001 par value per share. The first Series of Preferred Stock shall be designated “**Series A Preferred Stock**” and shall consist of Fifty Two Thousand Two Hundred Sixty One (52,261) shares. The second Series of Preferred Stock shall be designated “**Series B Preferred Stock**” and shall consist of Nine Million Five Hundred Fifty Thousand Four Hundred Forty Two (9,550,442) shares. The third Series of Preferred Stock shall be designated “**Series C Preferred Stock**” and shall consist of Three Million Eight Hundred Eighty Five Thousand Seven Hundred Thirteen (3,885,713) shares. The fourth Series of Preferred Stock shall be designated “**Series D Preferred Stock**” and shall consist of Three Million Two Hundred Sixty Thousand Eighty Hundred Sixty Nine (3,260,869) shares. The fifth Series of Preferred Stock shall be designated “**Series E Preferred Stock**” and shall consist of Seventeen Million (17,000,000) shares.

ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) “**Conversion Price**” shall initially mean (i) \$10.00 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein); (ii) \$0.357 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein); (iii) \$0.4375 per share for the Series C Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein); (iv) \$0.46 per share for the Series D Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein) and (v) \$0.5147 per share for the Series E Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein).

(b) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

(c) “**Corporation**” shall mean Verdiem Corporation, a Delaware corporation.

(d) “**Distribution**” shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation or its subsidiaries for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of repurchase, in each case (A) at no greater than the original cost thereof and (B) approved by the Corporation’s Board of Directors (the “**Board of Directors**”), (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right and approved by the Board of Directors, and (iii) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Common and Preferred Stock of the Corporation voting together as a single class.

(e) “**Dividend Rate**” shall mean an annual rate of (i) \$0.0286 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein); (ii) \$0.0350 per share for the Series C Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein); (iii) \$0.0368 per share for the Series D Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein) and (iv) \$0.0412 per share for the Series E Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein).

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

(g) “**Original Issue Date**” shall mean the date of the Corporation’s first issuance of Series E Preferred Stock.

(h) “**Original Issue Price**” shall mean (i) \$10.00 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein); (ii) \$0.357 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein); (iii) \$0.4375 per share for the Series C Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein); (iv) \$0.46 per share for the Series D Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein) and (v) \$0.5147 per share for the Series E Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below and as otherwise set forth elsewhere herein).

(i) “**Preferred Stock**” shall mean the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock.

(j) “**Recapitalization**” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(k) “**Senior Preferred Stock**” shall mean the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock.

(l) “**Series A Liquidation Preference**” shall mean \$10.00 per share of Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein).

(m) “**Series B Liquidation Preference**” shall mean \$0.357 per share of Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein).

(n) “**Series C Liquidation Preference**” shall mean \$0.4375 per share of Series C Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein).

(o) “**Series D Liquidation Preference**” shall mean \$0.46 per share of Series D Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein).

(p) “**Series E Liquidation Preference**” shall mean \$0.5147 per share of Series E Preferred Stock (subject to adjustment from time to time for Recapitalizations as described in Section 4(f) below as set forth elsewhere herein).

2. Dividends.

(a) Senior Preferred Stock. In any calendar year, the holders of outstanding shares of Senior Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Senior Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Series A Preferred Stock or Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Series A Preferred Stock or Common Stock unless dividends on the Senior Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Senior Preferred Stock have been paid or set aside for payment to the Senior Preferred Stock holders. The right to receive dividends on shares of Senior Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Senior Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. Payment of any dividends to the holders of Senior Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rates for each series of Senior Preferred Stock.

(b) Additional Dividends. After the payment or setting aside for payment of the dividends described in Section 2(a), any additional dividends (other than dividends on Common Stock payable solely in Common Stock) set aside or paid in any fiscal year shall be set aside or paid among the holders of the Preferred Stock and Common Stock then outstanding on a *pro rata, pari passu* basis in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted at the then-effective Conversion Rate (as defined in Section 4 hereof).

(c) Non-Cash Distributions. Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

(d) Waiver of Dividends. Any dividend preference of any series of Senior Preferred Stock may be waived, in whole or in part, by the consent or vote of the holders of a majority of the outstanding shares of such series.

3. Liquidation Rights.

(a) Series E Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series E Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Common Stock by reason of their ownership of such stock, an amount per share for each share of Series E Preferred Stock held by them equal to the sum of (i) the Series E Liquidation Preference and (ii) all declared but unpaid dividends (if any) on such share of Series E Preferred Stock, or such lesser amount as may be approved by the holders of a majority of the outstanding shares of Series E Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series E Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Series E Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Series D Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the amounts to which the holders of Series E Preferred Stock are entitled pursuant to Section 3(a), the holders of the Series D Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock by reason of their ownership of such stock, an amount per share for each share of Series D Preferred Stock held by them equal to the sum of (i) the Series D Liquidation Preference and (ii) all declared but unpaid dividends (if any) on such share of Series D Preferred Stock or such lesser amount as may be approved by the holders of a majority of the outstanding shares of Series D Preferred Stock. If, upon the liquidation, dissolution or winding up of the Corporation and after the full payment of amounts due to the holders of Series E Preferred Stock pursuant to Section 3(a), the assets of the Corporation legally available for distribution to the holders of the Series D Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(b), then all assets of the Corporation remaining legally available for distribution after the distribution specified in Section 3(a) shall be distributed with equal priority and *pro rata* among the holders of the Series D Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(b).

(c) Series C Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the amounts to which the holders of Series E Preferred Stock and Series D Preferred Stock are entitled pursuant to Sections 3(a) and 3(b), the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Series A Preferred Stock, Series B Preferred Stock and Common Stock by reason of their ownership of such stock, an amount per share for each share of Series C Preferred Stock held by them equal to the sum of (i) the Series C Liquidation Preference and (ii) all declared but unpaid dividends (if any) on such share of Series C Preferred Stock, or such lesser amount as may be approved by the holders of a majority of the outstanding shares of Series C Preferred Stock. If, upon the liquidation, dissolution or winding up of the Corporation and after the full payment of amounts due to the holders of Series E Preferred Stock and Series D Preferred Stock pursuant to Sections 3(a) and 3(b), the assets of the Corporation legally available for distribution to the holders of the Series C Preferred Stock are

insufficient to permit the payment to such holders of the full amounts specified in this Section 3(c), then all assets of the Corporation remaining legally available for distribution after the distribution specified in Sections 3(a) and 3(b) shall be distributed with equal priority and pro rata among the holders of the Series C Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(c).

(d) Series B Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the amounts to which the holders of Series E Preferred Stock, Series D Preferred Stock and Series C Preferred Stock are entitled pursuant to Sections 3(a), 3(b) and 3(c), the holders of the Series B Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Series A Preferred Stock and Common Stock by reason of their ownership of such stock, an amount per share for each share of Series B Preferred Stock held by them equal to the sum of (i) the Series B Liquidation Preference and (ii) all declared but unpaid dividends (if any) on such share of Series B Preferred Stock, or such lesser amount as may be approved by the holders of a majority of the outstanding shares of Series B Preferred Stock. If, upon the liquidation, dissolution or winding up of the Corporation and after the full payment of amounts due to the holders of Series E Preferred Stock, Series D Preferred Stock and Series C Preferred Stock pursuant to Sections 3(a), 3(b) and 3(c), the assets of the Corporation legally available for distribution to the holders of the Series B Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(d), then all assets of the Corporation remaining legally available for distribution after the distribution specified in Sections 3(a), 3(b) and 3(c) shall be distributed with equal priority and pro rata among the holders of the Series B Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(d).

(e) Series A Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the amounts to which the holders of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock and Series B Preferred Stock are entitled pursuant to Sections 3(a), 3(b), 3(c) and 3(d), the holders of the Series A Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A Preferred Stock held by them equal to the sum of (i) the Series A Liquidation Preference and (ii) all declared but unpaid dividends (if any) on such share of Series A Preferred Stock, or such lesser amount as may be approved by the holders of a majority of the outstanding shares of Series A Preferred Stock. If, upon the liquidation, dissolution or winding up of the Corporation and after the full payment of amounts due to the holders of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock and Series B Preferred Stock pursuant to Sections 3(a), 3(b), 3(c) and 3(d), the assets of the Corporation legally available for distribution to the holders of the Series A Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(e), then all assets of the Corporation remaining legally available for distribution after the distribution specified in Sections 3(a), 3(b), 3(c) and 3(d) shall be distributed with equal priority and pro rata among the holders of the Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(e).

(f) Remaining Assets. After the payment to the holders of Preferred Stock of the full preferential amounts specified in Sections 3(a), 3(b), 3(c), 3(d) and 3(e), the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed with equal priority and *pro rata* among the holders of the Senior Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them, with the shares of Senior Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Rate. Notwithstanding the foregoing, the aggregate distributions made pursuant to one or more subsections of this Section 3 with respect to any share of Senior Preferred Stock shall not exceed an amount equal to (i) two

times the Series E Liquidation Preference plus any declared but unpaid dividends with respect to any share of Series E Preferred Stock; (ii) two times the Series D Liquidation Preference plus any declared but unpaid dividends with respect to any share of Series D Preferred Stock; (iii) two times the Series C Liquidation Preference plus any declared but unpaid dividends with respect to any share of Series C Preferred Stock and (iv) two times the Series B Liquidation Preference plus any declared but unpaid dividends with respect to any share of Series B Preferred Stock.

(g) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first foregoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(h) Reorganization. For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction retain, immediately after such transaction or series of transactions, as a result of shares in the Corporation held by such holders prior to such transaction, at least a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole (including an exclusive license that constitutes the effective disposition of all or substantially all of the Corporation's and its subsidiaries' intellectual property and/or technology taken as a whole) by means of any transaction or series of related transactions, except where such sale, lease or other disposition (or exclusive license) is to a wholly-owned subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a liquidation, dissolution or winding up pursuant to clause (i) or (ii) of the preceding sentence may be waived by the consent or vote of a majority of the outstanding Senior Preferred Stock, voting as a single class on an as-converted basis (with all shares of Senior Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate).

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

(i) if the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this subsection 3(i), “trading day” shall mean any day which the exchange or system on which the securities to be distributed are traded is open and “closing prices” or “closing bid prices” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows:

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series of Preferred Stock. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the “Conversion Rate” for each such series.) Upon any decrease or increase in the Conversion Price for any series of Senior Preferred Stock, as described in this Section 4, the Conversion Rate for such series of Senior Preferred Stock shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “Securities Act”), covering the offer and sale of the Corporation’s Common Stock, at an offering price per share that is not less than \$1.5441 (as adjusted for Recapitalizations) and with aggregate gross proceeds to the Corporation (before deduction of underwriters’ discounts and commissions) not less than \$50,000,000, or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of (A) a majority of the Preferred Stock then outstanding, voting as a single class on an as-converted basis (with all shares of Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate), and (B) a majority of the Series E Preferred Stock then outstanding, or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an “Automatic Conversion Event”).

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of 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 then fair market value of a share of Common Stock as determined by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, he shall either (i) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (ii) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; *provided, however,* that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically

without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided further*, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(d) Adjustments to Conversion Price of Senior Preferred Stock for Diluting Issues.

(i) Special Definition. For purposes of this paragraph 4(d), “**Additional Shares of Common**” shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than issuances or deemed issuances of:

(1) shares of Common Stock issued or issuable to officers, directors and employees of, or consultants to, the Corporation pursuant to stock grants, option plans, purchase plans or other employee stock incentive programs or arrangements approved by the Board of Directors, or upon exercise of options or warrants granted to such parties pursuant to any such plan or arrangement;

(2) shares of Common Stock or Preferred Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of the Original Issue Date;

(3) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to paragraph 4(e), 4(f) or 4(g) hereof;

(4) shares of Common Stock issued in a registered public offering under the Securities Act;

(5) shares of Common Stock, Preferred Stock, Options or Convertible Securities issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, in each case approved by the Board of Directors;

(6) shares of Common Stock, Preferred Stock, Options or Convertible Securities issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction approved by the Board of Directors;

(7) shares of Common Stock, Preferred Stock, Options or Convertible Securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; and/or

(8) shares of Common Stock, Preferred Stock, Options or Convertible Securities specifically excluded from the definition of Additional Shares of Common Stock by the affirmative vote of at least (A) a majority of the Senior Preferred Stock then outstanding, voting as a single class on an as-converted basis (with all shares of Senior Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate), and (B) a majority of the Series E Preferred Stock then outstanding.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Senior Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Senior Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible 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 (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been 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, *provided* that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Section 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Sections 4(e), 4(f) and 4(g) hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Senior Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each Series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 4(d)(v)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Senior Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Senior Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would purchase at such Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of this Subsection 4(d)(iv), all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other

expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) 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; and

(c) in the event Additional Shares of Common 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 (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) shall be determined by dividing

(x) 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

(y) 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.

(e) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above (“**Liquidation Rights**”), if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of a majority of the outstanding shares of such series either before or after the issuance causing the adjustment; *provided* that the foregoing shall not limit the provisions of Section 7 below. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(j) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve (or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Section 3(h);

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of a majority of the Preferred Stock, voting as a single class on an as-converted basis (with all shares of Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate).

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5. Voting.

(a) Restricted Class Voting. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) No Series Voting. Other than as provided herein or required by law, there shall be no series voting.

(c) Preferred Stock. Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(d) So long as at least 5,000,000 shares (as adjusted for Recapitalizations) of Series E Preferred Stock remain outstanding, the holders of Series E Preferred Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors (the "**Series E Director**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. So long as at least 8,000,000 shares (as adjusted for Recapitalizations) of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or any combination of the foregoing remain outstanding, the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting as a single class on an as-converted basis (with all shares of such series of Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate), shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. The holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. Any additional members of the Board of Directors shall be elected by the holders of Common Stock and Preferred Stock, voting as a single class on an as-converted basis (with all shares of Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate). If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors elected by the same

series, class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy.

(e) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the stock of the Corporation without a vote of the holders of the Common Stock voting as a separate class, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

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

6. Redemption.

(a) At any time after June 29, 2012, and at the election of the holders of at least a majority of the then outstanding shares of Senior Preferred Stock, voting as a single class on an as-converted basis (with all shares of Senior Preferred Stock being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate), the Corporation shall redeem, out of funds legally available therefor, all (but not less than all) outstanding shares of Senior Preferred Stock which have not been converted into Common Stock pursuant to Section 4 hereof, in three (3) equal annual installments (each a "**Redemption Date**"). The Corporation shall redeem the shares of Senior Preferred Stock by paying in cash an amount per share equal to the Original Issue Price for such series of Senior Preferred Stock, plus an amount equal to all declared and unpaid dividends thereon, whether or not earned on such series of Senior Preferred Stock (the "**Redemption Price**"). The number of shares of each series of Senior Preferred Stock that the Corporation shall be required under this Section 6 to redeem on any one (1) Redemption Date shall be equal to the amount determined by dividing: (a) the aggregate number of shares of such series of Senior Preferred Stock outstanding immediately prior to the Redemption Date by; (b) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies).

(b) Any redemption effected pursuant to Section 6(a) shall be made to the holders of each series of Senior Preferred Stock on a *pro rata* basis among the holders of such series of Senior Preferred Stock in proportion to the number of shares of such series of Senior Preferred Stock then held by them. If the funds legally available for redemption of the Senior Preferred Stock shall be insufficient to permit the payment of the full Redemption Prices of all series of Senior Preferred Stock, the Corporation shall effect such redemption by (i) first allocating the amount available for redemption to each series of Senior Preferred Stock on a *pro rata* basis in proportion to the aggregate redemption payment that holders of such series of Senior Preferred Stock would receive in connection with full redemption and (ii) next to the holders of each series of Senior Preferred Stock on a *pro rata* basis among all holder of such series of Senior Preferred Stock, such that each holder of such series of Senior Preferred Stock shall receive a redemption payment equal to the product of (A) the redemption amount available to all holders of such series of Senior Preferred Stock as determined in (i) above, multiplied by (B) a fraction, the numerator of which is the number of shares of such series of Senior Preferred Stock then held by the holder, and the denominator of which is the number of shares of such series of Senior Preferred Stock outstanding immediately prior to the Redemption Date.

(c) At least fifteen (15), but no more than thirty (30) days prior to each Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Senior Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such

holder to surrender to the Corporation, in the manner and at the place designated, the holder's certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided herein, on or after the Redemption Date each holder of Preferred Stock to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) From and after the applicable Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Senior Preferred Stock designated for redemption in the Redemption Notice as holders of Senior Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to the shares designated for redemption on such date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Senior Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Senior Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed based upon their holdings of Senior Preferred Stock. The shares of Senior Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Senior Preferred Stock such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date, but which it has not redeemed.

(e) On or prior to each Redemption Date, the Corporation may deposit the Redemption Price of all shares of Senior Preferred Stock designated for redemption in the Redemption Notice and not yet redeemed with a bank or trust corporation having aggregate capital and surplus in excess of \$100,000,000, as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, with irrevocable instructions and authority to the bank or trust corporation to pay the Redemption Price for such shares to their respective holders on or after the Redemption Date upon receipt of notification from the Corporation that such holder has surrendered a share certificate to the Corporation pursuant to Section 6(c) above. As of the Redemption Date, the deposit shall constitute full payment of the shares to their holders, and from and after the Redemption Date the shares so called for redemption shall be redeemed and shall be deemed to be no longer outstanding, and the holders thereof shall cease to be stockholders with respect to such shares and shall have no rights with respect thereto except the right to receive from the bank or trust corporation payment of the Redemption Price of the shares, without interest, upon surrender of their certificates therefor. Such instructions shall also provide that any moneys deposited by the Corporation pursuant to this Section 6(e) for the redemption of shares thereafter converted into shares of the Corporation's Common Stock pursuant to Section 4 hereof prior to the Redemption Date shall be returned to the Corporation forthwith upon such conversion. The balance of any moneys deposited by the Corporation pursuant to this Section 6(e) remaining unclaimed at the expiration of two (2) years following the Redemption Date shall thereafter be returned to the Corporation upon its request expressed in a resolution of its Board of Directors.

7. Amendments and Changes. As long as at least 5,000,000 shares of the Senior Preferred Stock (as adjusted for Recapitalizations) shall be issued and outstanding, the Corporation shall not (by amendment, reclassification, merger, consolidation or otherwise), without first obtaining the approval (by vote or written consent as provided by law) of the holders of a majority of the outstanding shares of Senior Preferred Stock, voting as a single class on an as-converted basis (with all shares of Senior Preferred Stock

being treated as if they had been converted to shares of Common Stock at the then applicable Conversion Rate):

- (a) alter or change the rights, preference or privileges of, or restrictions provided for the benefit of, the Preferred Stock;
- (b) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Common Stock or Preferred Stock or any series thereof;
- (c) create, or issue or obligate itself to issue, any (i) new class or series of equity security having any rights, preferences, privileges or powers that are senior or superior to or on a parity with any series of Senior Preferred Stock or (ii) any security convertible into or exercisable for any new class or series of equity security having any rights, preferences, privileges or powers that are senior or superior to or on a parity with any series of Senior Preferred Stock, unless the issuance of such convertible or exercisable security has been approved by the Board of Directors, including the Series E Director;
- (d) redeem or repurchase shares (excluding the redemption of shares of Senior Preferred Stock pursuant to Section 6 hereof and the repurchase of shares of Common Stock, at cost, 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);
- (e) declare or pay any Distribution with respect to the Preferred Stock (other than as set forth in Section 6 hereof) or Common Stock of the Corporation;
- (f) increase or decreased the authorized number of members of the Board of Directors;
- (g) enter into or legally bind the Corporation to enter into (i) any transaction or series of related transactions that would be deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Section 3(h) above or (ii) an exclusive license of the intellectual property or technology of the Corporation and/or any of its subsidiaries that would constitute the effective disposition of a material portion of the intellectual property or technology of the Corporation and its subsidiaries, taken as a whole;
- (h) voluntarily liquidate or dissolve the Corporation;
- (i) amend the terms of the Common Stock; or
- (j) amend, alter, repeal waive or rescind any provision of the Certificate of Incorporation or Bylaws of the Corporation.

8. Reissuance of Preferred Stock. In the event that any shares of Preferred Stock shall be converted pursuant to Section 4, redeemed pursuant to Section 6 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by this Corporation.

9. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

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

ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended 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.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

3. Neither any amendment nor repeal of this ARTICLE X, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of 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.