

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	06/10/2008

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Aspen Aerogels, Inc.		06/10/2008	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	Aspen Aerogels, Inc.
Street Address:	30 Forbes Road, Bldg B
City:	Northborough
State/Country:	MASSACHUSETTS
Postal Code:	01532
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 5

Property Type	Number	Word Mark
Registration Number:	3250920	SPACELOFT
Serial Number:	78829676	CRYOGEL
Serial Number:	78828473	ASPEN AEROGELS
Serial Number:	78544109	NANOTECHNOLOGY AT WORK
Registration Number:	2137705	PYROGEL

CORRESPONDENCE DATA

Fax Number: (202)330-5168
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 508-691-1145
 Email: poongs@aerogel.com
 Correspondent Name: Poongunran Muthukumaran
 Address Line 1: 30 Forbes Road, Bldg B
 Address Line 2: IP Department
 Address Line 4: Northborough, MASSACHUSETTS 01532

CH \$140.00 3250920

ATTORNEY DOCKET NUMBER:	MERGER - RECORDATION TM
NAME OF SUBMITTER:	Poongunran Muthukumaran
Signature:	/Poongunran Muthukumaran/
Date:	07/07/2008

Total Attachments: 26

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Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"ASPEN AEROGELS, INC.", A DELAWARE CORPORATION,
WITH AND INTO "ASPEN MERGER SUB, INC." UNDER THE NAME OF
"ASPEN AEROGELS, INC.", A CORPORATION ORGANIZED AND EXISTING
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED
IN THIS OFFICE THE TENTH DAY OF JUNE, A.D. 2008, AT 12:51
O'CLOCK P.M.

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

4545505 8100M

080678214



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6648265

DATE: 06-10-08

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

TRADEMARK
REEL: 003810 FRAME: 0848

CERTIFICATE OF MERGER

OF

ASPEN AEROGELS, INC.

AND

ASPEN MERGER SUB, INC.

It is hereby certified that:

1. The constituent business corporations participating in the merger herein certified are:

(i) Aspen Aerogels, Inc., which is incorporated under the laws of the State of Delaware; and

(ii) Aspen Merger Sub, Inc., which is incorporated under the laws of the State of Delaware.

2. An Agreement and Plan of Merger has been approved, adopted, certified, executed, and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of subsection (c) of Section 251 of the General Corporation Law of the State of Delaware.

3. The name of the surviving corporation in the merger herein certified is Aspen Merger Sub, Inc., which will continue its existence as said surviving corporation under the name Aspen Aerogels, Inc. upon the effective date of said merger pursuant to the provisions of the General Corporation Law of the State of Delaware.

4. The Certificate of Incorporation of Aspen Merger Sub, Inc. is to be amended and restated by reason of the Merger herein certified in its entirety as set forth on Exhibit A attached hereto, and said Certificate of Incorporation as so amended and restated shall continue to be the Certificate of Incorporation of said surviving corporation until further amended and changed in accordance with the provisions of the General Corporation Law of the State of Delaware.

5. The executed Agreement and Plan of Merger between the aforesaid constituent corporations is on file at an office of the aforesaid surviving corporation, the address of which is as follows:

30 Forbes Road, Bldg. B
Northborough, MA 01532

6. A copy of the aforesaid Agreement of Merger will be furnished by the aforesaid surviving corporation, on request, and without cost, to any stockholder of each of the aforesaid constituent corporations.

Dated: June 10, 2008

ASPEN AEROGELS, INC.

By: /s/ Donald R. Young
President and Chief Executive Officer

Dated: June 10, 2008

ASPEN MERGER SUB, INC.

By: /s/ Donald R. Young
President and Chief Executive Officer

EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

ASPEN MERGER SUB, INC.

Aspen Merger Sub, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the Corporation is Aspen Merger Sub, Inc. (the "**Corporation**").
2. The Corporation filed, with the Secretary of State of the State of Delaware, its original Certificate of Incorporation on May 16, 2008 (the "**Current Certificate of Incorporation**").
3. This Amended and Restated Certificate of Incorporation (the "**Certificate of Incorporation**") amends, restates and integrates the provisions of the Current Certificate of Incorporation and (i) was duly adopted by the board of directors of the Corporation (the "**Board of Directors**") in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware (the "**DGCL**"), (ii) was declared by the Board of Directors to be advisable and in the best interests of the Corporation and was directed by the Board of Directors to be submitted to and be considered by the stockholders of the Corporation entitled to vote thereon for approval by the affirmative vote of such stockholders in accordance with Section 242 of the DGCL and (iii) was duly adopted by a stockholder consent in lieu of a meeting of the stockholders, with the holders of a majority of the outstanding shares of the Corporation's capital stock entitled to vote thereon, and a majority of the outstanding capital stock of each class entitled to vote thereon as a class, consenting to the adoption of this Certificate of Incorporation in writing in accordance with the provisions of Sections 228 and 242 of the DGCL and the terms of the Current Certificate of Incorporation.
4. Capitalized terms used and not otherwise defined upon first usage herein shall have the meanings set forth in Section 4.3.7 of this Certificate of Incorporation.
5. The text of the Current Certificate of Incorporation is hereby amended and restated in its entirety to provide as follows:

ARTICLE I - NAME

The name of the Corporation is Aspen Aerogels, Inc.

ARTICLE II - REGISTERED OFFICE

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

ARTICLE III - PURPOSE AND POWERS

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL. The Corporation shall have all power necessary or convenient to the conduct, promotion or attainment of such acts and activities.

ARTICLE IV - CAPITAL STOCK

4.1 AUTHORIZED SHARES.

The total number of shares of all classes of stock that the Corporation shall have the authority to issue is 133,342,479. Of such shares, 60,611,390 shall be Preferred Stock, having a par value of \$0.001 per share ("**Preferred Stock**"), and 72,731,089 shall be Common Stock, all of one class, having a par value of \$0.001 per share ("**Common Stock**"). The Preferred Stock may be issued from time to time in one or more series. The first series of Preferred Stock shall consist of 4,012,657 shares of Series A Convertible Preferred Stock (the "**Series A Preferred Stock**"). The second series of Preferred Stock shall consist of 56,598,733 shares of Series B Convertible Preferred Stock (the "**Series B Preferred Stock**"). The Series A Preferred Stock shall consist of 2,276,385 shares of Series A-1 Convertible Preferred Stock (the "**Series A-1 Preferred Stock**"), 1,494,909 shares of Series A-2 Convertible Preferred Stock (the "**Series A-2 Preferred Stock**"), and 241,363 shares of Series A-3 Convertible Preferred Stock (the "**Series A-3 Preferred Stock**"). The Series B Preferred Stock shall consist of 18,322,130 shares of Series B-1 Convertible Preferred Stock (the "**Series B-1 Preferred Stock**"), 14,360,945 shares of Series B-2 Convertible Preferred Stock (the "**Series B-2 Preferred Stock**"), and 23,915,658 shares of Series B-3 Convertible Preferred Stock (the "**Series B-3 Preferred Stock**").

4.2 COMMON STOCK.

4.2.1 Relative Rights. The Common Stock shall be subject to all of the rights, privileges, preferences and priorities of the Preferred Stock as set forth in this Certificate of Incorporation. Each share of Common Stock shall have the same relative rights as and be identical in all respects to all the other shares of Common Stock.

4.2.2 Dividends. No dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on the Common Stock, nor shall any shares of Common Stock be repurchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to (i) the Stockholders' Agreement or any stock option agreement between the Corporation and its employees, (ii) agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation, (iii) other agreements that are approved by a majority of the Board, or (iv) the exercise of the Corporation's contractual right of first refusal upon a proposed transfer) unless and until (x) a dividend is paid to each stockholder of the Corporation in cash in an amount at least equal to one percent (1%) of the par value paid for each share of capital stock of the Corporation held by such stockholder (the "**One Percent Return**") and (y) a dividend is paid in full on all outstanding shares of Preferred Stock in an amount at least equal per share (on an as-if-converted to Common Stock basis) to the amount proposed to be paid, set aside or declared for each share of Common Stock, provided, that no dividends may be declared pursuant to

Section 4.2.2(y) so long as the Corporation shall have received a Redemption Notice and shall not have paid the full price required to be paid to the applicable holders of Preferred Stock under Section 4.3.3.

4.2.3 Dissolution, Liquidation, Winding Up. Unless otherwise provided in this Certificate of Incorporation pertaining to one or more series of Preferred Stock (including without limitation Section 4.3.2 of this Certificate of Incorporation), in the event of any Liquidation, the holders of the Common Stock shall become entitled, in accordance with Section 4.3.2(h) of this Certificate of Incorporation, to receive the assets of the Corporation remaining for distribution to the holders of the Corporation's capital stock after the Corporation shall have paid, or set aside for payment, to the holders of any class of stock having preference over the Common Stock, in the event of such Liquidation, the full preferential amounts (if any) to which they are entitled, including any amounts to which the holders of Preferred Stock are entitled pursuant to Sections 4.3.2(a) - (h) of this Certificate of Incorporation.

4.2.4 Voting Rights. Each holder of shares of Common Stock shall be entitled to attend all special and annual meetings of the stockholders of the Corporation and, together with the holders of all other classes of stock entitled to attend such meetings and to vote (except any class or series of stock having special voting rights), to cast one (1) vote for each outstanding share of Common Stock so held upon any matter or thing (including, without limitation, the election of one or more directors) properly considered and acted upon by the stockholders.

4.2.5 Increase or Decrease of 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 and the number of shares of Common Stock reserved pursuant to Section 4.3.5(g)(x) below) by the affirmative vote of (i) the holders of capital stock having a majority of the voting power of the Corporation (voting together on an as-if-converted-to Common Stock basis) and (ii) the Majority Holders, irrespective of the provisions of Section 242(b)(2) of the DGCL.

4.3 PREFERRED STOCK. The powers, designations, preferences and relative participating, optional or other rights of the Preferred Stock of the Corporation shall be as set forth in this Section 4.3 of this Certificate of Incorporation. The seniority of the Preferred Stock of the Corporation shall be as follows: (i) the Series B-1 Preferred Stock shall be senior to the Series B-2 Preferred Stock, the Series B-3 Preferred Stock, the Series A Preferred Stock and the Common Stock, (ii) the Series B-2 Preferred Stock shall be senior to the Series B-3 Preferred Stock, the Series A Preferred Stock and the Common Stock, (iii) the Series B-3 Preferred Stock shall be senior to the Series A Preferred Stock and the Common Stock, (iv) the Series A-1 Preferred Stock shall be senior to the Series A-2 Preferred Stock, the Series A-3 Preferred Stock and the Common Stock, (v) the Series A-2 Preferred Stock and the Series A-3 Preferred Stock shall rank on a *pari passu* basis with each other and shall be senior to the Common Stock, in each case in all respects as to rights of payment and distribution (whether in cash, in kind or in other property or securities) whether by way of dividend, upon liquidation, redemption or otherwise. Except as otherwise expressly provided in this Certificate of Incorporation, each share of Series A Preferred Stock shall have the same voting rights as all other shares of Series A

Preferred Stock, and each share of Series B Preferred Stock shall have the same voting rights as all other shares of Series B Preferred Stock.

4.3.1 Dividends. Whenever a dividend is payable upon a redemption of Preferred Stock, upon a Liquidation, upon declaration by the Board or upon conversion of Preferred Stock into Common Stock, as applicable to any class or series of capital stock of the Corporation, the dividends shall be allocated and distributed among the Corporation's stockholders as follows:

(a) First, the One Percent Return shall be paid to every stockholder of the Corporation.

(b) Second, the holders of shares of Series B-1 Preferred Stock (the "**Series B-1 Preferred Holders**") shall be entitled to receive, out of any assets legally available therefor, cumulative dividends at the rate of eight percent (8%) per annum, accruing from day to day (whether or not declared) on the Series B Original Issuance Price from the date on which the applicable share of Series B-1 Preferred Stock was issued. Other than the One Percent Return, the dividends on the Series B-1 Preferred Stock shall be paid prior and in preference to any declaration or payment of any dividend on the Common Stock, the Series A Preferred Stock, the Series B-2 Preferred Stock, the Series B-3 Preferred Stock or any other class of the Corporation's capital stock other than the Series B-1 Preferred Stock.

(c) Subject to Section 4.2.2, the payment of the One Percent Return and receipt by the holders of Series B-1 Preferred Stock of the dividends called for by Section 4.3.1(b) above, the holders of shares of Preferred Stock (the "**Preferred Holders**") shall be entitled to receive dividends, without duplication, out of any assets legally available therefor, when and if declared by the Board of Directors, prior and in preference to any declaration or payment of any dividend on the Common Stock or any other class of the Corporation's capital stock other than the Preferred Stock ("**Other Stock**").

4.3.2 Liquidation. Upon any Liquidation, distributions to the Corporation's stockholders shall be made in the following manner:

(a) First, all of the stockholders of the Corporation shall be entitled to receive an amount per share equal to the par value paid for each share of capital stock of the Corporation held by such stockholder.

(b) Second, all of the stockholders of the Corporation shall be entitled to receive an amount per share equal to the One Percent Return (together with the payment set forth in Section 4.3.2(a), the "**Senior Liquidation Preference**").

(c) Third, following payment in full of the Senior Liquidation Preference, the holders of Series B-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation (other than the Senior Liquidation Preference) to the holders of Series A Preferred Stock, Series B-2 Preferred Stock, Series B-3 Preferred Stock, Common Stock and/or any Other Stock, an amount per share of Series B-1 Preferred Stock equal to the Applicable Liquidation Amount. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay the holders of Series B-1

Preferred Stock the full Applicable Liquidation Amount pursuant to this paragraph (c), the holders of Series B-1 Preferred Stock shall share ratably in any distribution pursuant to this paragraph (c) in proportion to the aggregate Applicable Liquidation Amount to which each is entitled.

(d) Fourth, following payment in full to all of the stockholders of the Corporation of the Senior Liquidation Preference and to the holders of Series B-1 Preferred Stock of the Applicable Liquidation Amount set forth in Section 4.3.2(c), the holders of Series B-2 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-3 Preferred Stock, Common Stock and/or any Other Stock, an amount per share of Series B-2 Preferred Stock equal to the Applicable Liquidation Amount. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay the holders of Series B-2 Preferred Stock the full Applicable Liquidation Amount pursuant to this paragraph (d), the holders of Series B-2 Preferred Stock shall share ratably in any distribution pursuant to this paragraph (d) in proportion to the aggregate Applicable Liquidation Amount to which each is entitled.

(e) Fifth, following payment in full to all of the stockholders of the Corporation of the Senior Liquidation Preference and to the holders of Series B-1 Preferred Stock and Series B-2 Preferred Stock of the Applicable Liquidation Amounts set forth in Sections 4.3.2(c) and (d), the holders of Series B-3 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, Common Stock and/or any Other Stock, an amount per share of Series B-3 Preferred Stock equal to the Applicable Liquidation Amount. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay the holders of Series B-3 Preferred Stock the full Applicable Liquidation Amount pursuant to this paragraph (e), the holders of Series B-3 Preferred Stock shall share ratably in any distribution pursuant to this paragraph (e) in proportion to the aggregate Applicable Liquidation Amount to which each is entitled.

(f) Sixth, following payment in full to all of the stockholders of the Corporation of the Senior Liquidation Preference and to the holders of Series B Preferred Stock of the Applicable Liquidation Amounts set forth in Sections 4.3.2(c) - (e), the holders of Series A-1 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-2 Preferred Stock, Series A-3 Preferred Stock, Common Stock and/or any Other Stock, an amount per share of Series A-1 Preferred Stock equal to the Applicable Liquidation Amount. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay the holders of Series A-1 Preferred Stock the full Applicable Liquidation Amount pursuant to this paragraph (f), the holders of Series A-1 Preferred Stock shall share ratably in any distribution pursuant to this paragraph (f) in proportion to the aggregate Applicable Liquidation Amount to which each is entitled.

(g) Seventh, following payment in full to all of the stockholders of the Corporation of the Senior Liquidation Preference and to the holders of Series B Preferred Stock and Series A-1 Preferred Stock of the Applicable Liquidation Amounts set forth in Sections 4.3.2(c) - (f), the holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock together 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 and/or any Other Stock, an amount per share of Series A-2 Preferred Stock and Series A-3 Preferred Stock equal to the respective Applicable Liquidation Amounts therefor. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay the holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock the full Applicable Liquidation Amounts therefor pursuant to this paragraph (g), the holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock together shall share ratably in any distribution pursuant to this paragraph (g) in proportion to the aggregate Applicable Liquidation Amount to which each is entitled.

(h) Eighth, following payment in full to all of the stockholders of the Corporation of the Senior Liquidation Preference and to the holders of Preferred Stock of the Applicable Liquidation Amounts set forth in Sections 4.3.2(c) - (g), the holders of Series B-1 Preferred Stock and Common Stock shall together receive any remaining assets of the Corporation then available for distribution to the Corporation's stockholders on an as-if-converted-to Common Stock basis; provided, that the aggregate amount which the holders of Series B-1 Preferred Stock are entitled to receive under Section 4.3.2(c) and this Section 4.3.2(h) on account of each share of Series B-1 Preferred Stock shall not exceed four times (4x) the Series B Original Issuance Price.

(i) The Corporation shall give each Preferred Holder written notice (a "**Proposal Notice**") of any impending or proposed Liquidation not later than thirty (30) days prior to the stockholders' meeting called to approve such impending or proposed Liquidation, if applicable, or thirty (30) days prior to the closing or occurrence of such impending or proposed Liquidation, whichever is earlier. Such Proposal Notice shall describe the material terms and conditions of the impending or proposed Liquidation and the provisions of this Section 4.3.2 as they apply to the allocation of proceeds to stockholders from such impending or proposed Liquidation. Upon any material changes to the terms of such impending or proposed Liquidation after the date the Corporation has given a related Proposal Notice, the Corporation shall give each Preferred Holder prompt written notice of such material change(s) (a "**Supplemental Notice**"). The impending or proposed Liquidation shall in no event be consummated sooner than thirty (30) days after the Corporation has given a related Proposal Notice or sooner than ten (10) days after the Corporation has given such Supplemental Notice; provided, however, that such periods may be shortened by approval or consent of the Majority Holders. Any Proposal Notice or Supplemental Notice required by this Section 4.3.2 shall be deemed given (a) if by nationally recognized overnight courier, on the next business day following such dispatch, and (b) if by United States mail, on the third business day after the posting thereof when deposited, postage prepaid, and addressed to the holder of record at its address appearing on the books of the Corporation. The rights conferred upon the Preferred Holders under this Section 4.3.2 are supplemental to and not in replacement of the provisions of Section 4.3.4(b).

(j) If the consideration received by the Corporation in a Liquidation is other than cash, its value will be deemed its fair market value as reasonably determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below:

(A) if traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(C) if there is no active public market, the value shall be the fair market value thereof, as reasonably determined in good faith by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in clauses (i) (A), (B) or (C) to reflect the approximate fair market value thereof, as reasonably determined in good faith by the Board of Directors.

(k) In the event the requirements of this Section 4.3.2 are not complied with, the Corporation shall forthwith either (i) cause the closing or consummation of the Liquidation to be postponed until such time as the requirements of this Section 4.3.2 shall have been complied with or (ii) cancel such transaction, in which event, the rights, preferences and privileges of the Preferred Holders shall in all respects be preserved.

4.3.3 Redemption.

(a) Upon a Sale of the Company or at any time after the fifth (5th) anniversary of the Original Issuance Date, (i) the Series B-1 Supermajority Holders shall have the right to require the Corporation to redeem all of the shares of Series B-1 Preferred Stock (ii) the holders of a majority of the Series B-2 Preferred Stock shall have the right to require the Corporation to redeem all of the shares of Series B-2 Preferred Stock, (iii) the holders of a majority of the Series B-3 Preferred Stock shall have the right to require the Corporation to redeem all of the shares of Series B-3 Preferred Stock, (iv) the holders of a majority of the Series A-1 Preferred Stock shall have the right to require the Corporation to redeem all of the shares of Series A-1 Preferred Stock, and (v) the holders of a majority of the Series A-2 Preferred Stock and the Series A-3 Preferred Stock, voting together on an as-if-converted-to Common Stock basis, shall have the right to require the Corporation to redeem all of the shares of Series A-2 Preferred Stock and Series A-3 Preferred Stock, in each case by delivering written notice of the exercise of such right to the Corporation ("**Redemption Notice**") at least fifteen (15) days (or such shorter period as permitted hereunder) prior to the effective date of the proposed redemption, provided, that (W) the Corporation shall not be permitted to redeem hereunder any shares of Series A Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock so long as the Corporation shall not have paid the full price required to be paid to the holders of Series B-1 Preferred Stock under this Section 4.3.3, (X) the Corporation shall not be permitted to redeem hereunder any shares of Series A Preferred Stock or Series B-3 Preferred Stock so long as the Corporation shall not have

paid the full price required to be paid to the holders of Series B-2 Preferred Stock under this Section 4.3.3, (Y) the Corporation shall not be permitted to redeem hereunder any shares of Series A Preferred Stock so long as the Corporation shall not have paid the full price required to be paid to the holders of Series B-3 Preferred Stock under this Section 4.3.3, (Z) the Corporation shall not be permitted to redeem hereunder any shares of Series A-2 Preferred Stock or Series A-3 Preferred Stock so long as the Corporation shall not have paid the full price required to be paid to the holders of Series A-1 Preferred Stock under this Section 4.3.3. Upon receipt of a Redemption Notice, the Corporation shall promptly notify the other holders of Preferred Stock of its receipt thereof.

(b) If the assets of the Corporation shall be insufficient to permit the payment of the full price required to be paid under this Section 4.3.3, then (i) with respect to the Series B-1 Preferred Stock, the holders of the Series B-1 Preferred Stock shall (in addition to their rights pursuant to Section 4.3.3(c) below) share ratably in any such redemption in proportion to the full Redemption Price each such holder of Series B-1 Preferred Stock is otherwise entitled to receive under this Section 4.3.3, (ii) subject to the payment in full of the Redemption Price to the holders of Series B-1 Preferred Stock pursuant to Section 4.3.3, the holders of Series B-2 Preferred Stock shall (in addition to their rights pursuant to Section 4.3.3(c) below) share ratably in any such redemption in proportion to the full Redemption Price each such holder is otherwise entitled to receive under this Section 4.3.3, (iii) subject to the payment in full of the Redemption Prices to the holders of Series B-1 Preferred Stock and Series B-2 Preferred Stock pursuant to Section 4.3.3, the holders of Series B-3 Preferred Stock shall (in addition to their rights pursuant to Section 4.3.3(c) below) share ratably in any such redemption in proportion to the full Redemption Price each such holder is otherwise entitled to receive under this Section 4.3.3, (iv) subject to the payment in full of the Redemption Prices to the holders of Series B Preferred Stock pursuant to Section 4.3.3, the holders of Series A-1 Preferred Stock shall (in addition to their rights pursuant to Section 4.3.3(c) below) share ratably in any such redemption in proportion to the full Redemption Price each such holder is otherwise entitled to receive under this Section 4.3.3, (v) subject to the payment in full of the Redemption Prices to the holders of Series B Preferred Stock and Series A-1 Preferred Stock pursuant to Section 4.3.3, the holders of Series A-2 Preferred Stock and Series A-3 Preferred Stock together shall (in addition to their rights pursuant to Section 4.3.3(c) below) share ratably in any such redemption in proportion to the full Redemption Price each such holder is otherwise entitled to receive under this Section 4.3.3; provided, however, the failure to redeem all shares offered shall be deemed a default hereunder and shall not relieve the Corporation of its obligation to redeem any such shares subject to a Redemption Notice and not so redeemed. With respect to a Sale of the Company, the redemption rights triggered by such Sale of the Company shall be contingent upon the consummation of the Sale of the Company.

(c) The price (the "Redemption Price") at which each share of Preferred Stock is to be redeemed by the Corporation pursuant to this Section 4.3.3 shall be equal to the greater of (i) the Applicable Liquidation Amount for such share of Preferred Stock and (ii) the fair market value (excluding accrued or declared but unpaid dividends) of such Preferred Stock calculated with reference to the then current fair market value of the Corporation (as determined below) plus accrued or declared but unpaid dividends on the stock being redeemed. The fair market value of the Corporation shall be determined for purposes of this Section 4.3.3(c) to be an amount

determined by an appraiser, investment bank or similar valuation professional mutually acceptable to the Corporation and the holders of a majority of Series B-1 Preferred Stock on the date of redemption; provided, that if such parties are unable to mutually agree on any such individual or entity within three (3) days following delivery of a Redemption Notice, such individual or entity shall be selected by the President of the American Arbitration Association as promptly as practicable; provided further, that upon a Sale of the Company the fair market value of the Corporation shall be all consideration payable to the stockholders of the Corporation, in connection with a sale, merger or consolidation, or all consideration payable to the Corporation, together with all other available assets of the Corporation (net of obligations owed by the Corporation), in the case of a sale, transfer, lease, license or other conveyance or disposition of all or substantially all of the assets of the Corporation.

(d) The Corporation shall pay the Redemption Price to the holders of the Preferred Stock being redeemed ratably over the three (3) year period starting on the date of the applicable Redemption Notice. On and after any date that the Corporation actually redeems shares of Preferred Stock pursuant to this Section 4.3.3, all rights in respect of the redeemed shares, except the right to receive the Redemption Price, shall cease and terminate, and such shares shall no longer be deemed to be outstanding, whether or not the certificates representing such shares have been received by the Corporation.

(e) Any communication or notice relating to redemption given pursuant to this Section 4.3.3 shall be sent by nationally recognized overnight courier or by United States first-class certified mail, return receipt requested, postage prepaid, to the Preferred Holders at their respective addresses as the same shall appear on the books of the Corporation, or to the Corporation at the address of its principal or registered office. At any time on or after the date of any redemption, the holders of record of the shares of Preferred Stock being redeemed shall only be entitled to receive the Redemption Price upon actual delivery to the Corporation or its agents of the certificates representing the shares to be redeemed.

(f) Notwithstanding anything to the contrary in this Section 4.3.3, no redemption of any shares of Preferred Stock shall be permitted or effected unless prior to such redemption the Corporation pays the One Percent Return to each stockholder of the Corporation.

(g) The Corporation shall give each Preferred Holder a Proposal Notice of any impending or proposed Sale of the Company not later than thirty (30) days prior to the stockholders' meeting called to approve such impending or proposed Sale of the Company, if applicable, or thirty (30) days prior to the closing or occurrence of such impending or proposed Sale of the Company, whichever is earlier. Such Proposal Notice shall describe the material terms and conditions of the impending or proposed Sale of the Company and the provisions of this Section 4.3.3 as they apply to the allocation of proceeds to stockholders from such impending or proposed Sale of the Company. Upon any material changes to the terms of such impending or proposed Sale of the Company after the date the Corporation has given a related Proposal Notice, the Corporation shall promptly give each Preferred Holder a Supplemental Notice. The impending or proposed Sale of the Company shall in no event be consummated sooner than thirty (30) days after the Corporation has given a related Proposal Notice or sooner than ten (10) days after the Corporation has given such Supplemental Notice; provided, however, that such periods

may be shortened by approval or consent of the Majority Holders. Any Proposal Notice or Supplemental Notice required by this Section 4.3.3 shall be deemed given (a) if by nationally recognized overnight courier, on the next business day following such dispatch, and (b) if by United States mail, on the third business day after the posting thereof when deposited, postage prepaid, and addressed to the holder of record at its address appearing on the books of the Corporation. The rights conferred upon the Preferred Holders under this Section 4.3.3 are supplemental to and not in replacement of the provisions of Section 4.3.4(b).

4.3.4 Voting Rights.

(a) In addition to the rights provided by law or in the Corporation's By-laws, each share of Preferred Stock shall entitle the holder thereof to such number of votes as shall equal the number of shares of Common Stock into which such share of Preferred Stock is then convertible pursuant to Section 4.3.5 at the record date for the determination of stockholders entitled to vote or, if no record date is established, at the date such vote is taken. The holders of Preferred Stock shall be entitled to vote on all matters as to which holders of Common Stock shall be entitled to vote, in the same manner and with the same effect as such holders of Common Stock, voting together with the holders of Common Stock as one class. When a separate vote of Series B-1 Preferred Stock is required by law or by this Certificate of Incorporation, such vote shall require consent of the Series B-1 Supermajority Holders for approval.

(b) The Corporation shall not, without the vote or prior written consent of the Majority Holders:

(i) increase or decrease the number of authorized shares of Common Stock or Preferred Stock or increase the number of shares reserved under the Corporation's equity incentive plans and other stock option agreements approved by the Board above 11,636,974 shares;

(ii) create any new class or series of stock, or any other equity securities, or any other securities convertible, exercisable or exchangeable into equity securities of the Corporation (including by way of reclassification of any existing securities), in each case having preference over, or being on parity with, any series of Preferred Stock;

(iii) declare or pay any dividends or make any other distributions on or with respect to the Common Stock or the Preferred Stock, other than dividends or distributions paid pursuant to Section 4.3.1(b);

(iv) except for a QPO or pursuant to Section 4.3.6, consummate a Liquidation or a Sale of the Company;

(v) declare bankruptcy, dissolve, voluntarily liquidate or voluntarily wind up the Corporation;

(vi) take any action that would modify, amend, alter or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or

the Corporation's Bylaws in any material respect or take any action that would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Common Stock or any series of Preferred Stock;

(vii) redeem or repurchase any shares of its capital stock (other than (A) redemptions of shares of Preferred Stock pursuant to this Certificate of Incorporation, (B) redemptions pursuant to the Stockholders' Agreement or any stock option agreement between the Corporation and its employees, (C) the repurchase of capital stock, at cost, from a member of the Corporation's management pursuant to a duly adopted employment, management, restricted stock or stock repurchase agreement or (D) redemptions pursuant to the Stockholder Agreement between the Corporation and Arcapita Ventures I Limited or any of its Affiliates ("Arcapita"));

(viii) change the number of directors authorized to serve on the Board;

(ix) acquire all or substantially all of the business, properties, assets or equity securities of any Person;

(x) assume any indebtedness for borrowed money in excess of \$250,000; or

(xi) make a fundamental change to the business of the Corporation.

4.3.5 Conversion.

(a) Upon the terms set forth in this Section 4.3.5, each holder of a share of Preferred Stock shall have the right, at such holder's option, at any time and from time to time, to convert such share into the number of fully paid and non-assessable shares of Common Stock equal to the quotient obtained by dividing (i) the Applicable Original Issuance Price of such share by (ii) the Conversion Price (as defined below). The conversion price per share at which shares of Common Stock shall be issuable upon conversion of shares of each series of Preferred Stock (the "**Conversion Price**") shall be the Applicable Original Issuance Price as adjusted pursuant to Section 4.3.5(e). The holder of shares of Preferred Stock may exercise the conversion right pursuant to this Section 4.3.5(a) by delivering to the Corporation the certificate for the shares to be converted, duly endorsed or assigned in blank or to the Corporation (if required by it), accompanied by written notice stating that the holder elects to convert such shares and stating the name or names (with address(es)) in which the certificate or certificates for the shares of Common Stock are to be issued. Conversion shall be deemed to have been effected on the date when such delivery is made (the "**Conversion Date**"). Upon a conversion of any shares of Series B-1 Preferred Stock pursuant to this Section 4.3.5(a), any accrued or declared and unpaid dividends on such shares of Series B-1 Preferred Stock shall be paid in accordance with the provisions of Section 4.3.5(e) below.

(b) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock (determined pursuant to Section 4.3.5(a) above), based on the then-effective and applicable Conversion Price therefor, at any time (i) upon the affirmative election of holders of a majority of Series A Preferred Stock or (ii) immediately upon the closing of a QPO.

(c) Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock (determined pursuant to Section 4.3.5(a) above), based on the then-effective and applicable Conversion Price therefor, at any time (i) upon the affirmative election of both (A) the holders of a majority of Series B Preferred Stock, and (B) the Series B-1 Supermajority Holders (with, so long as it holds at least either (x) sixty percent (60%) of the capital securities of the Corporation originally acquired by it as of the date hereof or (y) five percent (5%) of the Common Stock Deemed Outstanding, Arcapita Ventures I Limited voting with such Series B-1 Supermajority Holders), or (ii) immediately upon the closing of a QPO. A conversion of Preferred Stock into shares of Common Stock pursuant to either this Section 4.3.5(c) or Section 4.3.5(b) shall be referred to as an "Automatic Conversion".

(d) Notwithstanding any other provision herein to the contrary, upon the occurrence of an Automatic Conversion, the applicable outstanding shares of a series 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 pursuant to Section 4.3.5(a) above; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided in Section 4.3.5(a), 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. The Conversion Date for the applicable shares of Preferred Stock converted pursuant to an Automatic Conversion shall be deemed to be the date of the consummation of the QPO or the date of the delivery of the applicable election notice. In the case of an Automatic Conversion effected by reason of a QPO, such conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the Person(s) entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. Upon an Automatic Conversion, any accrued or declared and unpaid dividends on the Series B-1 Preferred Stock shall be paid in accordance with the provisions of Section 4.3.5(e) below.

(e) At the time of the conversion of any shares of Preferred Stock into Common Stock under Section 4.3.5(a), 4.3.5(b), or 4.3.5(c), the Corporation shall issue and deliver to the holders of such shares, upon the written order of such holders, to the place designated by such holders, a certificate or certificates for the number of full shares of Common Stock to which such holders are entitled, together with, if applicable, (i) a cash amount in respect of any fractional interest in a share of Common Stock required pursuant to Section 4.3.5(f) below, and (ii) with regard to the Series B-1 Preferred Stock, an equivalent value in Common Stock (at the Common Stock's fair market value as reasonably determined in good faith by the Board of Directors as of the date of such conversion), of any accrued or declared and unpaid dividends on such shares of Preferred Stock being converted. The Person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of Common Stock of record on the Conversion Date unless the transfer books of the Corporation are closed on that date, in which event such Person shall be deemed to have become a holder of Common Stock of record on the next succeeding date on which the transfer books are open, but the Conversion Price

shall be that in effect on the Conversion Date, and the rights of the holder of the shares of Preferred Stock so converted shall cease on the Conversion Date. Upon conversion of only a portion of the number of shares covered by a certificate representing shares of Preferred Stock surrendered for conversion, the Corporation shall issue and deliver upon the written order of the holder of the certificate so surrendered for conversion, at the expense of the Corporation, a new certificate covering the number of shares of Preferred Stock representing the unconverted portion of the certificate so surrendered.

(f) Upon conversion, the Corporation shall not issue fractional shares of its Common Stock and shall distribute cash in lieu of such fractional shares in an amount equal to the product of (i) the price of one share of Common Stock as reasonably determined in good faith by the Board and (ii) such fractional interest. The number of shares of Common Stock issuable upon conversion of Preferred Stock shall be computed on the basis of the aggregate number of shares of Preferred Stock to be converted.

(g) The Conversion Price for any series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If the Corporation shall, at any time or from time to time after the Original Issuance Date, issue any shares of Common Stock (or be deemed to have issued shares of Common Stock as provided herein), other than Excluded Stock, without consideration or for a consideration per share less than the Conversion Price for the Series B Preferred Stock in effect immediately prior to the issuance of such Common Stock, then the Conversion Price for each series of Preferred Stock, as in effect immediately prior to each such issuance, shall forthwith be lowered to a price equal to the quotient obtained by dividing (x) an amount equal to the sum of (I) the total number of shares of Common Stock Deemed Outstanding immediately prior to such issuance, *multiplied by* the Conversion Price in effect immediately prior to such issuance, and (II) the consideration received by the Corporation upon such issuance; by (y) the total number of shares of Common Stock Deemed Outstanding immediately after the issuance of such Common Stock.

(ii) For the purposes of any adjustment of the Conversion Price pursuant to clause (i) above, the following provisions shall be applicable:

(A) In the case of the issuance of Common Stock for cash in a public offering or private placement, the consideration shall be deemed to be the amount of cash paid therefor after deducting therefrom any discounts, commissions or placement fees payable by the Corporation to any underwriter or placement agent in connection with the issuance and sale thereof.

(B) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value per share thereof as reasonably determined in good faith by the Board, irrespective of any accounting treatment.

(C) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities (except for options to acquire Excluded Stock):

(1) the aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities, options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 4.3.5(g)(ii)(A) and 4.3.5(g)(ii)(B) above);

(3) on any change in the number of shares or exercise price of Common Stock deliverable upon exercise of any such options or rights or conversions of or exchanges for such securities, other than a change resulting from the antidilution provisions thereof, the Conversion Price shall forthwith be readjusted to the Conversion Price as would have been obtained had the adjustment made upon the issuance of such options, rights or securities not converted prior to such change or options or rights related to such securities not converted prior to such change been made upon the basis of such change; and

(4) on the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price shall forthwith be readjusted to the Conversion Price as would have been obtained had the adjustment made upon the issuance of such options, rights, securities or options or rights related to such securities been made upon the basis of the issuance of only

the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities, or upon the exercise of the options or rights related to such securities and subsequent conversion or exchange thereof.

(iii) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, following the record date for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be increased in proportion to such increase in outstanding shares.

(iv) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock, then, following the record date for such combination, the Conversion Price of each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(v) In the event of any capital reorganization of the Corporation, any reclassification of the stock of the Corporation (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), or any consolidation or merger of the Corporation, each share of Preferred Stock shall after such reorganization, reclassification, consolidation or merger be convertible into the kind and number of shares of stock or other securities or property of the Corporation or of the corporation resulting from such consolidation or surviving such merger to which the holder of the number of shares of Common Stock deliverable (immediately prior to the time of such reorganization, reclassification, consolidation or merger) upon conversion of such share of Preferred Stock would have been entitled upon such reorganization, reclassification, consolidation or merger. The provisions of this clause (v) shall similarly apply to successive reorganizations, reclassifications, consolidations or mergers.

(vi) No adjustment in the Conversion Price of any series of Preferred Stock shall be required unless such adjustment would require an increase or decrease of at least 0.1% in the Conversion Price for such series; provided, however, that any adjustments not required to be made by virtue of this sentence shall be carried forward and taken into account in any subsequent adjustment. All calculations under Sections 4.3.5(g)(i) through 4.3.5(g)(v) above shall be made to the nearest one hundredth (1/100) of a cent or the nearest one one hundred thousandth (1/100,000) of a share, as the case may be.

(vii) In any case in which the provisions of this Section 4.3.5(g) shall require that an adjustment become effective immediately after a record date of an event,

the Corporation may defer until the occurrence of such event (A) issuing to the holder of any share of Preferred Stock converted after such record date and before the occurrence of such event the shares of capital stock issuable upon such conversion by reason of the adjustment required by such event in addition to the shares of capital stock issuable upon such conversion before giving effect to such adjustments, and (B) if applicable, paying to such holder any amount in cash in lieu of a fractional share of capital stock pursuant to Section 4.3.5(e) above; provided, however, that the Corporation shall deliver to such holder an appropriate instrument evidencing such holder's right to receive such additional shares and such cash.

(viii) Whenever the Conversion Price of any series of Preferred Stock shall be adjusted as provided in Section 4.3.5(g), the Corporation shall make available for inspection during regular business hours, at its principal executive offices or at such other place as may be designated by the Corporation, a statement, signed by its chief executive officer, showing in detail the facts requiring such adjustment and the Conversion Price for each series of Preferred Stock that shall be in effect after such adjustment. The Corporation shall also cause a copy of such statement to be sent by first class certified mail, return receipt requested and postage prepaid, to each Preferred Holder affected by the adjustment at such holder's address appearing on the Corporation's records. Where appropriate, such copy may be given in advance and may be included as part of any notice required to be mailed under the provisions of Section 4.3.5(g)(ix) below.

(ix) If the Corporation shall propose to take any action of the types described in clauses (iii), (iv), (v) or (xi) of this Section 4.3.5(g), the Corporation shall give notice to each Preferred Holder, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least twenty (20) days prior to the date so fixed, and in case of all other action, such notice shall be given at least thirty (30) days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(x) The Corporation shall at all times keep reserved, free from preemptive rights, out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of Preferred Stock or the conversion of any other securities issued pursuant to clauses (v) or (xi) of this Section 4.3.5(g), sufficient shares of Common Stock to provide for the conversion of all outstanding shares of Preferred Stock.

(xi) Without duplication of any other adjustment provided for in this Section 4.3.5, at any time the Corporation makes or fixes a record date for the

determination of holders of Common Stock entitled to receive a dividend or other distribution payable in property or securities of the Corporation other than shares of Common Stock, then, and in each such case, the Conversion Price then in effect shall be adjusted (and any other appropriate action shall be taken by the Corporation) by multiplying the Conversion Price in effect immediately prior to the date of such dividend or distribution by a fraction, (i) the numerator of which shall be the fair market value (in all cases under this clause (xi), as reasonably determined in good faith by the Board of Directors) of each share of Common Stock immediately prior to the date of such dividend or distribution, less the fair market value of the portion of the property or securities applicable to one share of Common Stock so dividended or distributed, and (ii) the denominator of which shall be the fair market value of the Common Stock immediately prior to the date of such dividend or distribution (such fraction not to be greater than one).

(xii) If the Series B-1 Supermajority Holders consent in writing to limit, or waive in its entirety, any antidilution adjustment to which the holders of Series B-1 Preferred Stock would otherwise be entitled hereunder, the Corporation shall not be required to make any adjustment whatsoever with respect to Series B-1 Preferred Stock in excess of such limit or at all, as the terms of such consent may dictate. If the holders of at least sixty-six and two thirds percent (66 $\frac{2}{3}$ %) of the then outstanding Series A Preferred Stock, Series B-2 Preferred Stock or Series B-3 Preferred Stock, as the case may be, consent in writing to limit, or waive in its entirety, any antidilution adjustment to which the holders of such series of Preferred Stock would otherwise be entitled hereunder, the Corporation shall not be required to make any adjustment whatsoever with respect to such series of Preferred Stock in excess of such limit or at all, as the terms of such consent may dictate.

(xiii) The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, spin-off, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action or inaction, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Section 4.3.5(g) and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Preferred Holders against impairment.

(xiv) The computations of all amounts under this Section 4.3.5(g) shall be made assuming all other antidilution or similar adjustments to be made to the terms of all other securities resulting from the transaction causing an adjustment pursuant to this Section 4.3.5(g) have previously been made so as to maintain the relative economic interest of the Preferred Stock vis à vis all other securities issued by the Corporation.

(xv) The Corporation shall take or cause to be taken such steps as shall be necessary to ensure that the par value per share of Common Stock is at all times less than or equal to the Conversion Price for each series of Preferred Stock.

(h) Upon conversion of all of the shares of any series of Preferred Stock into Common Stock, all of the provisions herein governing such series of Preferred Stock shall terminate with respect to the Corporation.

4.3.6 Drag-Along Rights.

The Board and stockholders of the Corporation holding at least a majority of the Series B Preferred Stock of the Corporation shall have the authority to approve a Sale of the Company. Each stockholder of the Corporation shall consent to, vote for and raise no objections against such Sale of the Company. If such Sale of the Company is structured as a sale of shares, each stockholder of the Corporation shall sell the stock held by it on terms and conditions approved by the Board and such majority of stockholders of Series B Preferred Stock. Each stockholder of the Corporation will take all action necessary and desirable in connection with the consummation of such Sale of the Company, including, without limitation, the waiver of all appraisal rights and rights to object to or dissent available to any such stockholder under applicable law (to the extent permitted by applicable law), and the approval of any matters ancillary to the Sale of the Company (including any conversion or exchange of stock of the Corporation for shares of equity securities of another Person). Each stockholder of the Corporation will bear its pro rata share (based upon the number of shares of Common Stock Deemed Outstanding) of the cost of any sale of the capital stock of the Corporation pursuant to a Sale of the Company to the extent such costs are incurred for the benefit of all stockholders of the Corporation and are not otherwise paid by the Corporation or the acquiring party. Costs incurred by stockholders of the Corporation on their own behalf will not be considered costs of the transaction hereunder. The obligations of stockholders under this Section 4.3.6 shall automatically terminate upon a QPO.

4.3.7 Definitions. As used in this Certificate of Incorporation, the following terms have the following meanings:

(a) "**Affiliate**" means, (1) with respect to any Person, any of (a) a director, officer or stockholder holding 5% or more of the capital stock (on a fully diluted basis) of such Person, (b) a spouse, parent, sibling or descendant of such Person (or a spouse, parent, sibling or descendant of any director or officer of such Person) and (c) any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person or (2) in any event, any Person meeting the definition of "Affiliate" set forth in Rule 405 under the Securities Act. The term "control" includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(b) "**Applicable Liquidation Amount**" means, (i) as to each share of Series A-1 Preferred Stock, the Series A-1 Original Issuance Price, plus all declared but unpaid dividends thereon, (ii) as to each share of Series A-2 Preferred Stock, the Series A-2 Original Issuance Price, plus all declared but unpaid dividends thereon, (iii) as to each share of Series A-3 Preferred Stock, the Series A-3 Original Issuance Price, plus all declared but unpaid dividends thereon, (iv) as to each share of Series B-1 Preferred Stock, two times (2x) the Series B Original Issuance Price, plus all accrued or declared but unpaid dividends thereon, and (v) as to each share of Series B-2

Preferred Stock and Series B-3 Preferred Stock, the Series B Original Issuance Price, plus all declared but unpaid dividends thereon.

(c) **"Applicable Original Issuance Price"** means the Series A-1 Original Issuance Price with respect to the Series A-1 Preferred Stock, the Series A-2 Original Issuance Price with respect to the Series A-2 Preferred Stock, the Series A-3 Original Issuance Price with respect to the Series A-3 Preferred Stock, and the Series B Original Issuance Price with respect to the Series B Preferred Stock.

(d) **"Board"** means the Board of Directors of the Corporation.

(e) **"Common Stock Deemed Outstanding"** means, at any given time, the sum of (i) the number of shares of Common Stock actually outstanding at such time, (ii) the number of shares of Common Stock issuable upon conversion of the Preferred Stock, and (iii) the number of shares of Common Stock issuable upon the exercise in full of all Convertible Securities whether or not the Convertible Securities are convertible into Common Stock at such time, but shall exclude any shares of Common Stock or Convertible Securities in the treasury of the Corporation or held for the account of the Corporation or any of its subsidiaries.

(f) **"Convertible Securities"** means securities or obligations that are exercisable for, convertible into or exchangeable for shares of Common Stock. The term includes options, warrants or other rights to subscribe for or purchase Common Stock or to subscribe for or purchase other securities that are convertible into, directly or indirectly, or exchangeable for Common Stock.

(g) **"Excluded Stock"** means (i) up to 11,636,974 shares (as adjusted equitably for stock dividends, stock splits, combinations and the like) of Common Stock issuable upon exercise of stock options granted to directors, officers, consultants, advisors, employees or former employees of the Corporation or its subsidiaries or Affiliates approved by the Board as such amount may be increased from time to time by a majority of the Board, (ii) shares of Common Stock issued upon conversion of shares of Preferred Stock, (iii) shares of Common Stock or securities convertible into or exercisable for Common Stock issued in connection with any recapitalization, reclassification, subdivision, stock split, stock dividend or combination of shares of Preferred Stock or Common Stock, (iv) shares of Common Stock or securities convertible into or exercisable for Common Stock issued in connection with equipment lease financings, debt financing transactions, strategic transactions, mergers or acquisitions approved in advance by a majority of the Board, (v) securities offered to the public pursuant to a QPO or other registered underwritten public offering, (vi) shares of Common Stock (as adjusted equitably for stock dividends, stock splits, combinations and the like) or Series B-1 Preferred Stock issuable upon exercise of stock purchase warrants outstanding on the Original Issuance Date, and (vii) shares of Common Stock issued upon exercise, conversion or exchange of any Convertible Securities not previously described above.

(h) **"Liquidation"** means any single transaction or series of related transactions involving any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(i) **"Majority Holders"** means the holders of at least a majority of the shares of Preferred Stock then outstanding, on an as-if-converted to Common Stock basis.

(j) **"Original Issuance Date"** means the date that the first share of Series B Preferred Stock is issued by the Corporation.

(k) **"One Percent Return"** is defined in Section 4.2.2.

(l) **"Person"** shall be construed broadly and shall include an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

(m) **"QPO"** means an underwritten public offering (underwritten by a reputable underwriter of national reputation) of shares of Common Stock registered pursuant to the Securities Act involving aggregate proceeds to the Corporation of at least \$60,000,000 with an offering price per share of not less than three times (3x) the Series B Original Issuance Price.

(n) **"Sale of the Company"** means (i) the sale, transfer or other disposition in one transaction or a series of related transactions of fifty percent (50%) or more of the voting power of the Corporation to a Person or group of Persons that is not an Affiliate of the Corporation, or (ii) a sale, transfer, lease, license or other conveyance or disposition of all or substantially all of the assets of the Corporation.

(o) **"Securities Act"** means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(p) **"Senior Liquidation Preference"** is defined in Section 4.3.2(b).

(q) **"Series A-1 Original Issuance Price"** means \$7.801464 (as adjusted for stock splits, stock dividends, combinations or other similar events).

(r) **"Series A-2 Original Issuance Price"** means \$4.350864 (as adjusted for stock splits, stock dividends, combinations or other similar events).

(s) **"Series A-3 Original Issuance Price"** means \$4.586088 (as adjusted for stock splits, stock dividends, combinations or other similar events).

(t) **"Series B-1 Supermajority Holders"** means the holders of at least seventy percent (70%) of the shares of Series B-1 Preferred Stock then outstanding, on an as-if-converted to Common Stock basis (assuming full exercise of any outstanding warrants to purchase shares of Series B-1 Preferred).

(u) **"Series B Original Issuance Price"** means \$2.165511 (as adjusted for stock splits, stock dividends, combinations or other similar events).

(v) "Stockholders' Agreement" means the Third Amended and Restated Stockholders' Agreement dated as of the date of this Certificate of Incorporation, among the Corporation and certain stockholders of the Corporation, as the same may be further amended, modified or supplemented from time to time.

ARTICLE V - BOARD OF DIRECTORS

The number of directors of the Corporation shall be such number as from time to time shall be fixed by, or in the manner provided in, the By-laws of the Corporation. Unless and except to the extent that the By-laws of the Corporation shall otherwise require, the election of directors of the Corporation need not be by written ballot. Except as otherwise provided in this Certificate of Incorporation, each director of the Corporation shall be entitled to one vote per director on all matters voted or acted upon by the Board of Directors.

ARTICLE VI - LIABILITY OF DIRECTORS

No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, that this provision shall not eliminate or limit the liability of a director: (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) under Section 174 of the DGCL; or (d) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended, at any time after approval by the stockholders of this Article VI, to authorize corporation 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 DGCL, as so amended. Any repeal or modification of this Article VI shall be prospective only and shall not adversely affect any right or protection of, or any limitation on the liability of, a director of the Corporation existing at, or arising out of facts or incidents occurring prior to, the effective date of such repeal or modification. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and, in its discretion, advancement of expenses to) agents of the Corporation (and any other persons to which DGCL permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by applicable provisions of the DGCL (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others. Any amendment, repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ARTICLE VII - DURATION OF CORPORATION

The Corporation is to have perpetual existence.

ARTICLE VIII - AMENDMENT OF BYLAWS

In furtherance and not in limitation of the powers conferred by the laws of Delaware, the Board of Directors of the Corporation is authorized and empowered to adopt, alter, amend and repeal the By-laws of the Corporation in any manner not inconsistent with the laws of Delaware or Section 4.3.4 of this Certificate of Incorporation.

ARTICLE IX - MEETINGS OF STOCKHOLDERS; CORPORATE BOOKS

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

ARTICLE X - AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and in accordance with the provisions hereof.

[Remainder of the page intentionally left blank]

I, Donald R. Young, the President of the Corporation, for the purpose of amending and restating the Corporation's certificate of incorporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed on behalf of the Corporation, and the facts herein stated are true, and accordingly hereunto set my hand this 10th day of June, 2008.

ASPEN MERGER SUB, INC.

By: /s/ Donald R. Young
Title: President