

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		CHANGE OF NAME	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Green Volts, Inc.		08/22/2008	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	GreenVolts, Inc.		
Street Address:	46400 Fremont Boulevard		
City:	Fremont		
State/Country:	CALIFORNIA		
Postal Code:	94538		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Serial Number:	77529374	G GREENVOLTS	
Serial Number:	77529362	THE POWER OF CONCENTRATION	
CORRESPONDENCE DATA			
Fax Number:	(650)493-6811		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	650-493-9300		
Email:	trademarks@wsgr.com		
Correspondent Name:	Wilson Sonsini Goodrich & Rosati		
Address Line 1:	650 Page Mill Road		
Address Line 4:	Palo Alto, CALIFORNIA 94304		
ATTORNEY DOCKET NUMBER:	33551-900/JW		
NAME OF SUBMITTER:	Nathan E. Ferguson		
Signature:	/Nathan E. Ferguson/		
Date:	05/20/2010		

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Total Attachments: 20

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Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "GREEN VOLTS, INC.", CHANGING ITS NAME FROM "GREEN VOLTS, INC." TO "GREENVOLTS, INC.", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF AUGUST, A.D. 2008, AT 8:30 O'CLOCK A.M.

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

4044240 8100

080893286



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6807481

DATE: 08-22-08

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

TRADEMARK
REEL: 004210 FRAME: 0090

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
GREEN VOLTS, INC.

Green Volts, Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), certifies that:

A. The name of the Corporation is Green Volts, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 12, 2005. The Corporation filed an Amended and Restated Certificate with the Secretary of State of the State of Delaware on October 25, 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, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Robert O. Cart, a duly authorized officer of the Corporation, on August 22, 2008.

/s/ Robert O. Cart
Robert O. Cart, President

EXHIBIT A

ARTICLE I

The name of the Corporation is GreenVolts, Inc. (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 (the “**DGCL**”).

ARTICLE III

The address of the Corporation’s registered office in the State of Delaware is 113 Barksdale Professional Center, City of Newark, County of New Castle, 19711. The name of the registered agent at such address is Delaware Intercorp, Inc.

ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is 47,359,096, consisting of 30,000,000 shares of Common Stock, \$0.001 par value per share, and 17,359,096 shares of Preferred Stock, \$0.001 par value per share. The first Series of Preferred Stock shall be designated “**Series A Preferred Stock**” and shall consist of 6,359,096 shares. The second Series of Preferred Stock shall be designated “**Series B Preferred Stock**” and shall consist of 11,000,000 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 mean \$1.59 per share for the Series A Preferred Stock and \$4.15628 per share for the Series B Preferred Stock (each subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(b) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities or rights convertible into or exchangeable for Common Stock or entitling the holder thereof to receive, directly or indirectly, shares of Common Stock.

(c) “**Distribution**” shall mean either of the following:

(i) the Corporation’s transfer of cash or other property in respect of any shares of the Corporation’s capital stock without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable solely in Common Stock; or

(ii) the Corporation's transfer of cash or other property in respect of any shares of the Corporation's capital stock in connection with a repurchase of any such shares, other than any of the following, in each case that has been approved by the Board of Directors: (1) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (2) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation pursuant to rights of first refusal contained in agreements providing for such right, (3) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, or (4) any other repurchase or redemption of capital stock of the Corporation approved by both the holders of a majority of the Common Stock then outstanding (voting as a separate class), and separately by the holders of a majority of the Preferred Stock then outstanding (voting as a separate class).

(d) "**Dividend Rate**" shall mean an annual rate of \$0.1272 per share for the Series A Preferred Stock and \$0.3325 per share for the Series B Preferred Stock (each subject to adjustment from time to time for Recapitalizations with respect to the Preferred Stock as set forth elsewhere herein).

(e) "**Liquidation Preference**" shall mean \$1.59 per share for the Series A Preferred Stock and \$4.15628 per share for the Series B Preferred Stock (each subject to adjustment from time to time for Recapitalizations with respect to the Preferred Stock 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 Price**" shall mean \$1.59 per share for the Series A Preferred Stock and \$4.15628 per share for the Series B Preferred Stock (each subject to adjustment from time to time for Recapitalizations with respect to the Preferred Stock as set forth elsewhere herein).

(h) "**Preferred Stock**" shall mean the Series A Preferred Stock and Series B Preferred Stock.

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

2. Dividends.

(a) Preferred Stock. In any calendar year, the holders of outstanding shares of 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 Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock of the Corporation in such calendar year. No Distributions shall be made with respect to the Common Stock unless dividends on the Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Preferred Stock have been paid or set aside for payment to the Preferred Stock holders. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and

no right to dividends shall accrue to holders of 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 Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rates for each series of 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 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 Preferred Stock may be waived, in whole or in part, by the consent or vote of the holders of the majority of the outstanding shares of such series.

3. Liquidation Rights.

(a) Liquidation Preference. In the event of any Deemed Liquidation Event (as defined below), distributions to the stockholders of the Corporation shall be made in the following manner:

(i) Series B Preferred Stock. 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 the Series A Preferred Stock or the 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 Liquidation Preference specified for such share of Series B Preferred Stock 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 a Deemed Liquidation Event the assets of the Corporation to be distributed 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(a)(i), 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 B Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a)(i).

(ii) Series A Preferred Stock. Upon the completion of the distribution required by Section 3(a)(i) above, 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 the 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 Liquidation

Preference specified for such share of Series A Preferred Stock 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 a Deemed Liquidation Event the assets of the Corporation to be distributed 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(a)(ii), then the entire assets of the Corporation legally available for distribution after distributions are made to the holders of Series B Preferred Stock pursuant to Section 3(a)(i) above 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(a)(ii).

(b) Remaining Assets. After the payment or setting aside for payment to the holders of Preferred Stock of the full amounts specified in Section 3(a) above, the entire remaining assets of the Corporation legally available for distribution shall be distributed *pro rata* to holders of the Preferred Stock and Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them, with the shares of 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 Preferred Stock shall not exceed an amount equal to two (2) times the applicable Liquidation Preference for that share of Preferred Stock plus any declared but unpaid dividends.

(c) Allocation of Contingent Payments. In the event of a Deemed Liquidation Event (as defined below), if any portion of the consideration payable to the stockholders of the Corporation, in their capacities as such, is placed into escrow and/or is payable to the stockholders of the Corporation, in their capacities as such, subject to contingencies (including, without limitation, an "earnout" mechanism), the definitive agreement related to such Deemed Liquidation Event shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3(a) and 3(b) as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration that becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3(a) and 3(b) after taking into account the previous payment of the Initial Consideration as part of the same transaction. In the event of such a Deemed Liquidation Event, the Corporation will be deemed to have complied with this Section 3(c) unless, prior to execution of the definitive agreement related to such Deemed Liquidation Event, the holders of a majority of the Preferred Stock then outstanding provide the Corporation with written notice to the contrary setting forth in reasonable detail the reasons for their belief that the Corporation is not in compliance with this Section 3(c).

(d) 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 forgoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(e) Deemed Conversion. Notwithstanding Sections 3(a) and 3(b), solely if, upon the occurrence of a Deemed Liquidation Event, the holders of the Preferred Stock would have been entitled to be paid an amount greater than the amount such holders would receive pursuant to Sections 3(a) and 3(b) if such holder had converted the shares of Preferred Stock held by it into Common Stock immediately prior to such liquidation event, then in lieu of the amount described in Sections 3(a) and 3(b), the holders of the Preferred Stock will receive an amount equal to the amount that would have been received by the holders if such Preferred Stock had been converted into Common Stock immediately prior to the Deemed Liquidation Event.

(f) Reorganization. For purposes of this Section 3, a “**Deemed Liquidation Event**” shall mean (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) 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 or as a result of capital stock received in 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, license, lease or other disposition of all or substantially all of the assets of the Corporation by means of any transaction or series of related transactions, except where such sale, license, lease or other disposition 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 Deemed Liquidation Event pursuant to clause (i) or (ii) of the preceding sentence may be waived by the written consent or vote of at least a majority of the outstanding shares of Preferred Stock.

(g) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in a Deemed Liquidation Event 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 Deemed Liquidation Event shall be valued as follows (unless otherwise specified in a definitive agreement relating to such Deemed Liquidation Event):

(i) If the securities are then traded on a national securities exchange or the Nasdaq Stock Market (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system 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(g), “**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 Nasdaq, 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.

(h) Contractual Enforcement of Deemed Liquidation Events. The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event unless, in the case of a merger, consolidation, or other corporate reorganization, the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with this Section 3. In the event of a Deemed Liquidation Event pursuant to clause (i) of Section 3(f), if the Corporation does not effect a dissolution of the Corporation under the DGCL within 30 days after such Deemed Liquidation Event, then (i) the Corporation shall deliver a written notice to each holder of Preferred Stock not later than 30 days after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (ii) the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold, as determined in good faith by the Board of Directors of the Corporation) (the “**Net Proceeds**”) to redeem, to the extent legally available therefor, on the 45th day after such Deemed Liquidation Event (the “**Liquidation Redemption Date**”), all outstanding shares of Preferred Stock at a price per share equal to the aggregate amounts that would have been payable to the holders of Preferred Stock in accordance with this Section 3 if such dissolution had been effected immediately following such Deemed Liquidation Event. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem a pro rata portion of each holder’s shares of Preferred Stock to the fullest extent of such Net Proceeds or such legally available funds, as the case may be, and, where such redemption is limited by the amount of legally available funds, the Corporation shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this section, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in the ordinary course of business.

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 as is determined by dividing the applicable Original Issue Price for the relevant series by the applicable Conversion Price for such series. 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 Preferred Stock, as described in this Section 4, the Conversion Rate for such series 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, *provided* that the offering price per share is not less than \$12.47 (as may be adjusted from time to time as a result of any Recapitalization) and the aggregate gross proceeds to the Corporation are 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 at least a majority of the Preferred Stock then outstanding (voting as a separate class on an as-converted basis), or, if later, the effective date for conversion specified in such request (each of the events referred to in clauses (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, she or it shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement reasonably 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, she or it 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 reasonably 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.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; *provided, however*, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) Adjustments to Conversion Price 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 filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of (the securities described in the following clauses (1) through (10) being referred to collectively as the “**Excluded Securities**”):

(1) Shares of Common Stock issued upon conversion of the Preferred Stock;

(2) 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;

(3) shares of Common Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of the date of the filing of this Amended and Restated Certificate of Incorporation;

(4) 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(d), 4(f) or 4(g) hereof;

(5) shares of Common Stock issued in a registered public offering under the Securities Act, pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(6) shares of Common Stock 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 approved by the Board of Directors (including approval of the Series B Director, as such term is defined in Section 5(d) below);

(7) shares of Common Stock 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 (including approval of the Series B Director, as such term is defined in Section 5(d) below);

(8) shares of Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation approved by the Board of Directors (including approval of the Series B Director, as such term is defined in Section 5(d) below);

(9) shares of Common Stock 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 (including approval of the Series B Director, as such term is defined in Section 5(d) below); and

(10) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions unanimously approved by the Board of Directors (including approval of the Series B Director, as such term is defined in Section 5(d) below).

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of 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)(vi)) 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 Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Corporation, at any time or from time to time after the original issuance date of the Series B Preferred Stock, 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) after an adjustment to reflect the deemed issuance of the maximum number of shares (as provided above), no further adjustment in the Conversion Price of any series of Preferred Stock shall be made solely as the result of 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(d), 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 of such Options or Convertible Securities (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 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 in this Amended and Restated Certificate of Incorporation 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 of such Options or Convertible Securities (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)(vi)) 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 Stock. In the event this Corporation, at any time or from time to time after the original issuance date of the Series B Preferred Stock, 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 Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of 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), the number of outstanding shares of Common Stock shall be deemed to include all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and assuming the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options.

(v) Waiver of Adjustment to Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively, upon the written consent or affirmative vote of the holders of at least a majority of the outstanding shares of such series of Preferred Stock. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(vi) 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.

(i) 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 for each series of Preferred Stock shall be recomputed and reduced, concurrently with the effectiveness of such subdivision, by multiplying the Conversion Price in effect immediately prior to such subdivision by a fraction in which (1) the numerator is the number of outstanding shares of Common Stock immediately prior to such subdivision; and (2) the denominator is the number of outstanding shares of Common Stock immediately after such subdivision.

(ii) 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 Price for each series of Preferred Stock shall be recomputed and increased,

concurrently with the effectiveness of such combination, by multiplying the Conversion Price in effect immediately prior to such combination by a fraction in which (1) the numerator is the number of outstanding shares of Common Stock immediately prior to such combination; and (2) the denominator is the number of outstanding shares of Common Stock immediately after such combination.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock.

(i) 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, each of the Dividend Rate, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock shall be recomputed and reduced, concurrently with the effectiveness of such subdivision, by multiplying each such amount, as in effect immediately prior to such subdivision, by a fraction in which (1) the numerator is the number of outstanding shares of Preferred Stock or series of Preferred Stock (as applicable) immediately prior to such subdivision; and (2) the denominator is the number of outstanding shares of Preferred Stock or series of Preferred Stock (as applicable) immediately after such subdivision.

(ii) 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, each of the Dividend Rate, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock shall be recomputed and increased, concurrently with the effectiveness of such combination, by multiplying each such amount, as in effect immediately prior to such combination, by a fraction in which (1) the numerator is the number of outstanding shares of Preferred Stock or series of Preferred Stock (as applicable) immediately prior to such combination; and (2) the denominator is the number of outstanding shares of Preferred Stock or series of Preferred Stock (as applicable) immediately after such combination.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above, 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 in subsections (e) or (f) above) (the “**Replacement Securities**”) by the application of an exchange ratio or other formula (the “**Replacement Formula**”), then each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into shares of the Replacement Securities, as specified below. The Replacement Securities to be received upon any such conversion of Preferred Stock shall equal the number of shares of the Common Stock that would have been received upon an identical conversion immediately prior to the applicable reorganization, reclassification or other event, as such number is adjusted by application of the Replacement Formula. In addition, all further adjustments provided herein shall apply to the Replacement Securities.

(h) Certificate as to Adjustment and Statement as to Conversion. Upon the occurrence of each adjustment or readjustment of the Conversion Price, or upon any event that results in any Replacement Securities, the Corporation at its expense shall promptly compute (if

applicable) such adjustment or readjustment and shall promptly furnish to each holder of Preferred Stock a written adjustment certificate (an "**Adjustment Certificate**"). Each Adjustment Certificate shall set forth the result of such adjustment, readjustment or substitution of Replacement Securities, shall contain a full explanation of all calculations involved in determining such result, and shall provide a detailed description of all material facts relating to such adjustment, readjustment or substitution. In addition, promptly upon the written request at any time by any holder of Preferred Stock, the Corporation at its expense shall furnish or cause to be furnished to such holder a conversion statement (a "**Conversion Statement**"). Each Conversion Statement shall set forth the Conversion Price, Original Issue Price and Conversion Rate in effect on the date of the Conversion Statement, and shall specify the number of shares of Common Stock or Replacement Securities (if applicable), together with the amount, if any, of other property, which would be received upon a conversion of Preferred Stock occurring on the date of the Conversion Statement.

(i) Notices of Record Date. If the 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 Deemed Liquidation Event;

then, in connection with each such event, this 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 clauses (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 separate class.

(j) 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 as a single class, and not as separate classes.

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

(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 rounded down to the nearest whole number.

(d) Election of Directors.

(i) So long as at least 3,000,000 shares (as adjusted for any Recapitalizations) of Preferred Stock remain outstanding, the holders Series A Preferred Stock shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "**Series A Director**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

(ii) So long as at least 3,000,000 shares (as adjusted for any Recapitalization) of Series B Preferred Stock remain outstanding, the holders of Series B Preferred Stock shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "**Series B Director**," and together with the Series A Director, the "**Preferred Directors**") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

(iii) The holders of Common Stock shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors.

(iv) Any additional members of the Corporation's Board of Directors shall be elected by the holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis, at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors. If a vacancy on the Board of Directors is to be filled by the Board of Directors, only directors elected by the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy. No

conversion of the Preferred Stock shall be deemed to shorten the term of any incumbent Director elected by the holders of the Preferred Stock.

(e) Adjustment in Authorized Common Stock. Pursuant to Section 242 of the DGCL, 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, plus the number of Common Shares required to be reserved under Section 4(j) above) by an affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation (voting together as a single class on an as-converted to Common Stock basis and without regard to the first two sentences of Section 242(b)(2) of the DGCL).

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

6. Preferred Stock Protective Provisions. So long as at least 3,000,000 shares (as adjusted for any Recapitalizations) of Preferred Stock remain issued and outstanding, the Corporation shall not (whether by merger, classification, consolidation or otherwise), without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the outstanding shares of the Preferred Stock (voting as a separate class):

(a) amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation, as it may be further amended or restated from time to time, if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock or any series thereof;

(b) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Preferred Stock or any series thereof;

(c) authorize or create or issue, or obligate itself to issue, any new class or series of equity security having rights, preferences or privileges senior to or on a parity with any series of Preferred Stock;

(d) enter into (or agree to enter into) any transaction or series of related transactions that would constitute a Deemed Liquidation Event;

(e) declare or pay any Distribution with respect to the Common Stock of the Corporation;

(f) increase or decrease the authorized number of Directors on the Corporation's Board of Directors; or

(g) amend this Section 6.

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

8. 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.