

04-28-2000



101338708
**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger

Effective Date
Month Day Year

Change of Name

Other

Conveying Party

Mark if additional names of receiving parties attached

Name Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

Corporation Association

Other

Citizenship State of Incorporation/Organization

04/27/2000 TTOM11 00000120 020755 75398983

01 FC:481
02 FC:482
40.00 CH
25.00 CH
PHL_A 1382729 v 1

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text" value="75/398983"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75398982"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

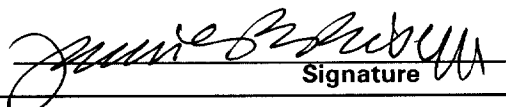
Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.) #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Jamie B. Bischoff
Name of Person Signing


Signature

4/5/00
Date Signed

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "COLLACANTH CHEMICAL CORPORATION", CHANGING ITS NAME FROM "COLLACANTH CHEMICAL CORPORATION" TO "COLLACANTH CORPORATION", FILED IN THIS OFFICE ON THE TWENTIETH DAY OF APRIL, A.D. 1999, AT 4:30 O'CLOCK P.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

2674486 8100
991155121

AUTHENTICATION: 9697378
DATE: 04-20-99

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
COELACANTH CHEMICAL CORPORATION

Coelacanth Chemical Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware DOES HEREBY CERTIFY:

FIRST: The original Certificate of Incorporation of Diversa Chemical Technologies, Inc. was filed with the Secretary of State of Delaware on October 17, 1996. The Certificate of Amendment of Certificate of Incorporation Before Payment of Capital of Diversa Chemical Technologies, Inc. was filed with the Secretary of State of Delaware on October 24, 1996. The Certificate of Amendment of Certificate of Incorporation was filed with the Secretary of State of Delaware on October 27, 1997, changing the name of the Company from Diversa Chemical Technologies, Inc. to Coelacanth Chemical Corporation. The Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on December 31, 1997. The Certificate of Amendment of the Amended and Restated Certificate of Incorporation of Coelacanth Chemical Corporation was filed with the Secretary of State of Delaware on July 17, 1998.

SECOND: the Second Amended and Restated Certificate of Incorporation of Coelacanth Corporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Section 245 and 242 of the General Corporation Law of the State of Delaware by the directors and stockholder of the Corporation.

THIRD: The Second Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference

IN WITNESS WHEREOF, the undersigned have cause this Certificate to be signed this 20th day of April, 1999.

COELACANTH CHEMICAL CORPORATION

By: _____


Eran Brosby, President

ATTEST:

By: _____


Stephan Dolezalek, Secretary

EXHIBIT A

SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
COELACANTH CORPORATION

FIRST: The name of the corporation (hereinafter called the "Corporation") is Coelacanth Corporation.

SECOND: The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

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

FOURTH:

A. This Corporation is authorized to issue two classes of shares to be designated respectively preferred stock ("Preferred Stock") and common stock ("Common Stock"). The total number of shares of Common Stock that the Corporation is authorized to issue is Fifty Million (50,000,000). The total number of shares of Preferred Stock that the Corporation shall have the authority to issue is Thirty-Six Million (36,000,000), of which Four Million Three Hundred Thousand (4,300,000) shares have been designated Series A Preferred Stock, of which Two Million, Seven Hundred Fifty Thousand (2,750,000) shares have been designated as Series B Preferred Stock, Eleven Million Eight Hundred and Fifty Thousand (11,850,000) shares have been designated as Series C Preferred Stock, (the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock collectively referred to herein as the "Designated Preferred Stock"), and Eleven Million Eight Hundred and Fifty Thousand (11,850,000) shares have been designated as Redeemable Preferred Stock. The Designated Preferred Stock and Redeemable Preferred Stock shall have a par value of \$0.0001 per share and the Common Stock shall have a par value of \$0.0001 per share.

B. Subject to compliance with applicable protective voting rights and provisions ("Protective Provisions"), which have been or may be granted to the Designated or Redeemable Preferred Stock, or future series of Preferred Stock in Certificates of Designations or in this Second Amended and Restated Certificate of Incorporation (the "Second Restated Certificate of Incorporation"), the Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock and the number of the shares constituting any such series and the designation thereof, or any of them. Subject to compliance with the Protective Provisions, but notwithstanding any other rights of the Designated or Redeemable Preferred Stock or any series of Preferred Stock, the rights, preferences, privileges and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in

provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any rights, preferences, privileges and restrictions of any present or future class or series of Preferred Stock or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of such series, prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. The powers, preferences, rights, restrictions and other matters relating to the Designated and Redeemable Preferred Stock are as follows:

1. Dividends.

a. *Redeemable Preferred Stock.* The holders of outstanding shares of Redeemable Preferred Stock shall be entitled to receive in preference to the holders of any and all other classes of capital stock of the Corporation, out of any funds legally available therefor, cumulative quarterly dividends on the Redeemable Preferred Stock in cash at the per share rate per quarter of two and twenty-five hundredths percent (2.25%) of the per share Redeemable Base Liquidation Amount (as defined in Section C.2(a)(i)) subject to proration for partial quarters on the basis of a 90-day quarter, accumulating and compounding quarterly on the last day of March, June, September and December of each year (a "Redeemable Cumulative Dividend"). Such dividends will accumulate quarterly in arrears commencing as of the date of issuance of the Redeemable Preferred Stock (the "Redeemable Original Issuance Date") and be cumulative, to the extent unpaid, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Redeemable Cumulative Dividends shall become due and payable with respect to any share of Redeemable Preferred Stock as provided in Section C.2 and Section C.3. Dividends paid in an amount less than the total amount of such dividends at the time accumulated and payable on all outstanding shares of Redeemable Preferred Stock shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. So long as any shares of Redeemable Preferred Stock are outstanding and the Redeemable Cumulative Dividends have not been paid in full in cash: (a) no dividend whatsoever (other than stock dividends) shall be paid or declared, and no distribution shall be made, on any Common Stock, Series A Preferred Stock, Series B Preferred Stock or other capital stock of the Corporation ranking with regard to dividend rights, rights upon a Liquidation Event or an Extraordinary Transaction, or redemption rights junior to the Redeemable Preferred Stock; and (b) except as provided in Section B, no shares of capital stock of the Corporation ranking junior to the Redeemable Preferred Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof. All numbers relating to the calculation of dividends pursuant to this Section C.1(a) shall be subject to equitable adjustment in the event of any stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the Redeemable Preferred Stock.

b. *Series C Preferred Stock.* The holders of shares of Series C Preferred Stock shall be entitled, in preference to the holders of any and all other classes of capital stock of the Corporation, to receive, when and if declared by the Board of Directors, out of funds legally available therefor, cumulative quarterly dividends on the Series C Preferred Stock payable in cash at the rate per quarter of one and eight-tenths percent (1.8%) of (i) \$0.76 per share (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series C Preferred Stock) plus (ii) any accumulated but unpaid dividends to which such holder of outstanding shares of Series C Preferred Stock is then entitled, if any, pursuant to this Section C.1(b) and Section C.3(b)(v); in each case subject to proration for partial quarters on the basis of a 90-day quarter, accumulating and compounding quarterly on the last day of March, June, September and December of each year (the "Convertible Cumulative Dividend"). Such dividends will accumulate quarterly commencing as of the date on which shares of Series C Preferred Stock are first issued and shall be cumulative, to the extent unpaid, whether or not they have been declared and whether or not the Corporation may legally pay the dividends. Such dividends shall become due and payable with respect to any shares of Series C Preferred Stock as provided in Sections C.4 and C.5. Dividends paid in an amount less than the total amount of such dividends at the time accumulated and payable on all outstanding shares of Series C Preferred Stock shall be allocated pro rata on a share-by-share basis among all such shares of Series C Preferred Stock at the time outstanding. So long as any shares of Series C Preferred Stock are outstanding and the Convertible Cumulative Dividends have not been paid in full in cash: (a) no dividend whatsoever (other than stock dividends) shall be paid or declared, and no distribution shall be made, on any Common Stock, Series A Preferred Stock, Series B Preferred Stock or other capital stock of the Corporation ranking with regard to dividend rights, rights upon a Liquidation Event (as defined in Section C.2.(b) below) or an Extraordinary Transaction (as defined in Section C.3.(b)(i) below) or redemption rights junior to the Series C Preferred Stock; and (b) except as provided in Section C.7(d), no shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock or other capital stock of the Corporation ranking with regard to dividend rights, rights upon a Liquidation Event or an Extraordinary Transaction or redemption rights junior to the Series C Preferred Stock shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

c. *Series A and Series B Preferred Stock.* Subject to the rights of the Series C Preferred Stock, the Redeemable Preferred Stock and other future series of Preferred Stock, the holders of the Series A and Series B Preferred Stock shall be entitled to receive dividends at the rate of eight percent (8%) of the original issue price thereof (\$0.606 for the Series A Preferred Stock and \$2.00 for the Series B Preferred Stock) per share (as adjusted for any stock dividends, combination or splits with respect to such shares) per annum, payable out of funds legally available therefore. Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be non-cumulative.

d. *No Dividends on Common Stock.* No dividends (other than those payable solely in the Common Stock of the Corporation) shall be paid on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total amounts required by paragraph b above on the Series C Preferred Stock shall have been paid or declared and set apart during that fiscal year, and no dividends shall be paid on any share of Common Stock unless a dividend (including the amount of any dividends paid pursuant to the above

provisions of this Section C.1) is paid with respect to all outstanding shares of Series A, Series B and Series C Preferred Stock in an amount for each such share of Series A, Series B and Series C Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Series A, Series B and Series C Preferred Stock could then be converted.

2. Liquidation.

a. Liquidation Preference. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "Liquidation Event"), each holder of outstanding shares of Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to stockholders, whether such assets are capital, surplus or earnings as follows:

(i) *Redeemable Preferred Stock.* The holders of outstanding shares of Redeemable Preferred Stock shall be entitled to be paid, before any amount shall be paid or distributed to the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock or of any other stock ranking on liquidation junior to the Redeemable Preferred Stock, an amount in cash equal to the sum of (a) \$0.76 per share of Redeemable Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Redeemable Preferred Stock), plus (b) any accumulated but unpaid dividends outstanding on the Series C Preferred Stock from which such holder's Redeemable Preferred Stock was converted pursuant to Section C.5 or C.3 and any interest due under Section C.3 in respect of such Series C Preferred Stock, in each case as of the Redeemable Original Issuance Date (or, for purposes of Section C.3, the effective date of the Extraordinary Transaction pursuant to which the holders of Series C Preferred Stock have elected to have their shares of Series C Preferred Stock redeemed or otherwise to participate in accordance with Section C.5(a)(ii), as applicable), plus (c) any accumulated but unpaid dividends to which such holder of outstanding shares of Redeemable Preferred Stock is entitled pursuant to Sections C.1 and C.3 hereof (the sum of clauses (a), (b) and (c) being referred to herein as the "Redeemable Base Liquidation Amount"), plus (d) any interest accrued pursuant to Section C.3 to which such holder of outstanding shares of Redeemable Preferred Stock is entitled, if any (the sum of clauses (a), (b), (c) and (d) being referred to herein as the "Redeemable Liquidation Preference Amount"); provided, however, that if, upon any Liquidation Event, the amounts payable with respect to the Redeemable Liquidation Preference Amount are not paid in full, the holders of the Redeemable Preferred Stock shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled.

(ii) *Series C Preferred Stock.* The holders of the Series C Preferred Stock shall be entitled to be paid, before any amount shall be paid or distributed to the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock or of any other stock ranking on liquidation junior to the Series C Preferred Stock, an amount in cash equal to (i) \$0.76 per share of Series C Preferred Stock held by such holder (adjusted appropriately for stock splits, stock dividends, recapitalizations and the like with respect to the Series C Preferred Stock), plus (ii) any accumulated but unpaid dividends to which such holder of outstanding shares of Series C Preferred Stock is then entitled, if any, pursuant to Section C.1(b) hereof (the sum of clauses (i) and (ii) being referred to herein as the "Series C Base Liquidation Amount"), plus (iii) any

interest accrued pursuant to Sections C.1(b) or C.3(b)(v) hereof to which such holder of Series C Preferred Stock is entitled, if any (the sum of clauses (i), (ii) and (iii) being referred to herein as the "Series C Liquidation Preference Amount"); provided, however, that if, upon any Liquidation Event, the amounts payable with respect to the Series C Liquidation Preference Amount are not paid in full, the holders of the Series C Preferred Stock shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled; and provided further, however, that if upon any Liquidation Event the holders of the outstanding shares of Series C Preferred Stock would receive more than the Series C Liquidation Preference Amount in the event all of their shares were converted into shares of Redeemable Preferred Stock and Common Stock immediately prior to the record date for distributions in connection with such Liquidation Event, then each holder of an outstanding share of Series C Preferred Stock shall receive, in lieu of the Series C Liquidation Preference Amount, an amount equal to such holder's Redeemable Liquidation Preference Amount (as defined in Section C.2(a) above) under Section C.3 before any amount shall be paid or distributed to the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock or of any other stock ranking on liquidation junior to the Series C Preferred Stock, and thereafter shall share with the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock and any other stock ranking on liquidation junior to the Series C Preferred Stock in the assets available for distribution, with such distributions to be made in cash and as if each share of Series C Preferred Stock had been converted into the number of shares of Redeemable Preferred Stock and Common Stock issuable upon the conversion of such holder's shares of Series C Preferred Stock immediately prior to any such Liquidation Event. The provisions of this Section C.2(b) shall not in any way limit the right of the holders of Series C Preferred Stock to elect to convert their shares of Series C Preferred Stock into shares of Redeemable Preferred Stock and Common Stock, pursuant to Section C.5, prior to or in connection with any Liquidation Event.

(iii) *Series A and Series B Preferred Stock.* After payment has been made to the holders of series C Preferred Stock and Redeemable Preferred Stock of the full amounts to which they shall be entitled under Sections C.2(a)(i) and (ii), the holders of the Series A Preferred Stock and Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock by reason of their ownership thereof, (a) the amount of \$0.606 per share for each share of Series A Preferred Stock (the "Original Series A Issue Price") and \$2.00 per share for each share of Series B Preferred Stock (the "Original Series B Issue Price") then held by them, plus (b) any declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A and Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of this corporation remaining legally available for distribution, following the distributions required to be made pursuant to clauses (i) and (ii) above, shall be distributed ratably among the holders of the Series A Preferred Stock and Series B Preferred Stock in proportion to the aggregate liquidation preferences of the respective series, and ratably among the holders of that series in proportion to the amount of such stock owned by each of such holders. For purposes of this Section C.2(a)(iii), (x) any acquisition of the Corporation by means of merger or other form of corporate reorganization in which outstanding shares of the Corporation are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary (other than a mere reincorporation transaction), (y) a sale of all or substantially all of the assets of the Corporation, or (z) any other transaction in

which in excess of fifty percent (50%) of the Company's voting power is transferred, shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Series A and Series B Preferred Stock to receive at the closing in cash, securities or other property (valued as provided in below) amounts as specified above. Whenever the distribution provided for in this Section C.2(a)(iii) shall be payable in securities or property other than cash, the value of such distribution shall be the fair market value of such securities or other property as determined in good faith by the Company's Board of Directors.

(iv) *Distribution of Remaining Assets.* After payment has been made to the holders of the Series A, Series B, Series C and Redeemable Preferred Stock of the full amounts to which they shall be entitled under Sections C.2(a)(i),(ii) and (iii), any remaining assets shall be distributed ratably to the holders of the Corporation's Common Stock.

b. Notice. Prior to the occurrence of any Liquidation Event, the Corporation will furnish each holder of Designated Preferred Stock and Redeemable Preferred Stock notice in accordance with Section C.5(p) hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail the facts of such Liquidation Event, stating in detail the amount(s) per share of Designated Preferred Stock and Redeemable Preferred Stock each holder of Designated Preferred Stock and Redeemable Preferred Stock would receive pursuant to the provisions of Section C.2(a) hereof and stating in detail the facts upon which such amounts were determined.

3. Redemption.

a. The Series A Preferred Stock and Series B Preferred Stock are not redeemable.

b. The Series C Preferred Stock is redeemable as follows:

(i) Redemption Events.

(1) Election On or After April 18, 2004. At any time on or after April 18, 2004 upon the election of the holder or holders of not less than a Majority Interest (as defined in Section C.4(a)) of the outstanding Series C Preferred Stock, the Corporation shall redeem all, or such lesser percentage as is requested by such holders, of the outstanding shares of Series C Preferred Stock at the Convertible Preferred Redemption Price specified in Section C.3.b(ii). The foregoing election shall be made by such holders giving the Corporation and each of the other holders of Series C Preferred Stock not less than fifteen (15) days prior written notice, which notice shall set forth the date for such redemption and specify the percentage of the outstanding Series C Preferred Stock (which percentage shall be allocated pro-rata among the holders of outstanding Series C Preferred Stock in proportion to the number of shares of Series C Preferred Stock they hold) to be redeemed.

(2) Extraordinary Transactions. Upon the election of the holder or holders of not less than a Majority Interest of the outstanding Series C Preferred Stock to have all, or such lesser percentage as is requested by such holders, of the outstanding shares of the Series C Preferred Stock redeemed or otherwise to participate in connection with the occurrence of any of the following events: (A) a merger or consolidation of the Corporation with or into

another corporation (with respect to which less than a majority of the outstanding voting power of the surviving or consolidated corporation is held by stockholders of the Corporation immediately prior to such event), (B) the sale or transfer of all or substantially all of the properties and assets of the Corporation and its subsidiaries, (C) any purchase by any party (or group of affiliated parties) other than MPM Asset Management LLC or its affiliates, of shares of capital stock of the Corporation (either through a negotiated stock purchase or a tender for such shares), the effect of which is that such party (or group of affiliated parties) that did not beneficially own a majority of the voting power of the outstanding shares of capital stock of the Corporation immediately prior to such purchase beneficially owns at least a majority of such voting power immediately after such purchase, (D) the redemption or repurchase of shares representing a majority of the voting power of the outstanding shares of capital stock of the Corporation, (E) an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, provided that such registration statement covers the offer and sale of Common Stock of which the aggregate net proceeds attributable to sales for the account of the Corporation is at least \$15,000,000 but not more than \$20,000,000, at a price per share equal to at least \$5.00 but not more than \$7.50 (as appropriately adjusted for any stock split, combination, reorganization, stock dividend or similar event), or (F) any breach by the Corporation of its obligations under this Second Restated Certificate of Incorporation or the Rights Agreement among the Corporation, the holders of Series C Preferred Stock and the other signatories thereto, provided, however that such breach is not cured within thirty (30) days of the Corporation's receipt of written notice of such breach from the holders and Series C Preferred Stock (each, an "Extraordinary Transaction"), then, as a part of and as a condition to the effectiveness of such Extraordinary Transaction, unless the holders of Series C Preferred Stock shall have elected to convert their shares of Series C Preferred Stock into shares of Redeemable Preferred Stock and Common Stock in accordance with the voluntary conversion provisions of Section C.5 prior to the effective date of such Extraordinary Transaction, the Corporation shall, on the effective date of such Extraordinary Transaction either (x) redeem all, or such lesser percentage as is requested by such holders, of the outstanding shares of Series C Preferred Stock for an amount equal to the Convertible Preferred Liquidation Preference Amount, such amount to be payable in cash or, at the election of holders of not less than a Majority Interest of the outstanding Series C Preferred Stock, in the same form of consideration as is paid to the holders of Common Stock in such Extraordinary Transaction, if applicable, and no payment shall be made to the holders of the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock or any other stock ranking with regard to dividend rights, rights upon a Liquidation Event or an Extraordinary Transaction, or redemption rights junior to the Series C Preferred Stock unless such amount is paid in full or (y) have all, or such lesser percentage as is requested by such holders, of the Series C Preferred Stock acquired, if applicable, in such Extraordinary Transaction on terms giving effect to the preferential amount to which the Series C Preferred Stock would be entitled in connection with a Liquidation Event pursuant to Section C.2 hereof or otherwise as agreed to by holders of a Majority Interest of the outstanding Series C Preferred Stock. For purposes of this Section C, a sale of substantially all of the assets of the Corporation and its subsidiaries shall mean the sale or other disposition other than in the ordinary course of business of more than Sixty-six percent (66 %) of such assets, by reference to the book value or the fair market value of such assets, determined on a consolidated basis under generally accepted accounting principles.

Notwithstanding the foregoing, if upon any Extraordinary Transaction in which the holders of a Majority of the Series C Preferred Stock elect to participate, the holders of the outstanding shares of Series C Preferred Stock would receive from the Corporation or the purchaser, as applicable, more than the Convertible Preferred Liquidation Preference Amount in the event their shares were converted into shares of Redeemable Preferred Stock and Common Stock immediately prior to such Extraordinary Transaction, then each holder of Series C Preferred Stock shall receive with respect to each outstanding share of Series C Preferred Stock held by such holder that is being redeemed or otherwise participating in connection with such Extraordinary Transaction an amount equal to the per share Redeemable Liquidation Preference Amount before any amount shall be paid or distributed to the holders of Common Stock, Series A Preferred Stock, Series B Preferred Stock or of any other stock ranking with regard to dividend rights, rights upon a Liquidation Event or an Extraordinary Transaction, or redemption rights junior to the Series C Preferred Stock, payable in cash, and thereafter shall share with the holders of the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock and any other stock ranking with regard to dividend rights, rights upon a Liquidation Event or an Extraordinary Transaction, or redemption rights junior to the Series C Preferred Stock in the proceeds of such Extraordinary Transaction or, as applicable, shall receive an amount equal to the amount per share that would be paid if the shares of Common Stock receivable upon conversion of the Series C Preferred Stock were being acquired in the Extraordinary Transaction at the same price per share as is paid for Common Stock, which excess amount shall be paid in the same form of consideration as is paid to holders of Common Stock, as if each share of Series C Preferred Stock that is being redeemed or otherwise participating in connection with such Extraordinary Transaction had been converted into the number of shares of Redeemable Preferred Stock and Common Stock issuable upon the conversion of such share of Series C Preferred Stock in accordance with Section C.5 hereof immediately prior to such Extraordinary Transaction.

Also, notwithstanding the foregoing, in connection with the acquisition of the Series C Preferred Stock in an Extraordinary Transaction which is to be accounted for by the acquiring entity as a pooling of interests, the holders of shares of Series C Preferred Stock shall receive upon such redemption, if so required for the application of such accounting treatment, and in lieu of cash, the number of shares of common stock of such entity having a value equal to the amount otherwise payable to the holders of Series C Preferred Stock in such Extraordinary Transaction pursuant to this Section C.3(b)(i) and having the same registered status or registration rights as any other shares in such transaction.

The foregoing election shall be made by such holders giving the Corporation and each other holder of Series C Preferred Stock not less than five (5) business days advance written notice prior to the scheduled effective date of the Extraordinary Transaction, which notice shall set forth the percentage of the outstanding Series C Preferred Stock (which percentage shall be allocated pro-rata among the holders of outstanding Series C Preferred Stock in proportion to the number of shares of Series C Preferred Stock that they hold) to be redeemed or otherwise to participate in connection with the Extraordinary Transaction. The provisions of this Section C.3 shall not in any way limit the right of the holders of Series C Preferred Stock to elect to convert their shares into shares of Redeemable Preferred Stock and Common Stock pursuant to Section C.5 prior to or in connection with any Extraordinary Transaction.

(ii) Valuation of Distribution Securities. Any securities or other consideration to be delivered to the holders of the Series C Preferred Stock upon any Extraordinary Transaction in accordance with the terms hereof shall be valued as follows:

(1) If traded on a nationally recognized securities exchange or inter-dealer quotation system, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) business days prior to the closing of such Extraordinary Transaction;

(2) If traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing of such Extraordinary Transaction; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors of the Corporation the holders of not less than a Majority Interest of the outstanding shares of Series C Preferred Stock, provided that if the Corporation and the holders of not less than a Majority Interest of the outstanding shares of Series C Preferred Stock are unable to reach agreement, then by independent appraisal by a mutually agreed to investment banker, the fees of which shall be paid by the Corporation.

(iii) Notice by Corporation. Prior to the occurrence of any Extraordinary Transaction, the Corporation will furnish each holder of Series C Preferred Stock notice in accordance with Section C.5(p) hereof, together with a certificate prepared by the chief financial officer of the Corporation describing in detail all material terms of such Extraordinary Transaction, including without limitation the consideration to be delivered in connection with such Extraordinary Transaction, the valuation of the Corporation at the time of such Extraordinary Transaction and the identities of the parties to the Extraordinary Transaction.

(iv) Purchase Date and Price. Upon the election of the holders of not less than a Majority Interest of the outstanding Series C Preferred Stock to cause the Corporation to redeem all, or such lesser percentage as is requested by such holders, of the Series C Preferred Stock or otherwise to participate in an Extraordinary Transaction pursuant to Section C.3(b) (i) or (ii), all holders of Series C Preferred Stock shall be deemed to have elected to cause the applicable percentage of the Series C Preferred Stock to be so redeemed or to so participate. Any date upon which a redemption or other acquisition shall actually occur in accordance with Section C.3(b) shall be referred to as a "Convertible Preferred Redemption Date." The redemption price for each share of Series C Preferred Stock redeemed or acquired pursuant to this Section C.3 shall be the per share Convertible Preferred Liquidation Preference Amount or such greater per share amount as may be payable pursuant to the second paragraph of Section C.3(b)(ii), if applicable (the "Convertible Preferred Redemption Price"); provided, however, that if at a Convertible Redemption Date shares of Series C Preferred Stock are unable to be redeemed (as contemplated by Section C.3(e) below), then holders of Series C Preferred Stock shall also be entitled to interest and dividends pursuant to Sections C.3(e) and (f). The aggregate Convertible Preferred Redemption Price shall be payable in cash in

immediately available funds to the respective holders of the Series C Preferred Stock on the Convertible Preferred Redemption Date (subject to Section C.3(e)) except to the extent contemplated by Section C.3(b)(ii). Upon any redemption or purchase of the Series C Preferred Stock as provided herein, holders of fractional shares shall receive proportionate amounts in respect thereof. Until the aggregate Convertible Preferred Redemption Price has been paid for all shares of Series C Preferred Stock being redeemed or purchased: (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation; and (B) except as permitted by Section C.7(d), no shares of capital stock of the Corporation (other than the Series C Preferred Stock in accordance with this Section C.3) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

(v) Redemption Prohibited. If, at a Convertible Redemption Date, the Corporation is prohibited under the Delaware General Corporation Law from redeeming all shares of Series C Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the holders of Series C Preferred Stock in proportion to the full respective redemption amounts to which they are entitled hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares under the Delaware General Corporation Law, subject to the last paragraph of Section C.7. Any shares of Series C Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Section C. The Corporation shall take such action as shall be necessary or appropriate to review and promptly remove any impediment to its ability to redeem Series C Preferred Stock or Redeemable Preferred Stock under the circumstances contemplated by this Section C.3(b) or Section C.3(c). In the event that the Corporation fails for any reason to redeem shares for which redemption is required pursuant to this Section C.3(b), including without limitation due to a prohibition of such redemption under the Delaware General Corporation Law, then during the period from the applicable Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable Convertible Preferred Base Liquidation Amount of such shares shall bear interest at the rate of eighteen percent (18%) per annum, with such interest to accrue daily in arrears and to be compounded annually; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess; provided, however, that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the applicable Redemption Date. In the event the Corporation fails to redeem shares for which redemption is required pursuant to this Section C.3(b) within six (6) months after the date on which redemption is required, for any reason, and such failure thereafter continues (the period during which such failure shall continue being referred to herein as a "Voting Period"), the number of Directors constituting the Board of Directors shall be automatically increased by a number equal to the number of Directors then constituting the Board of Directors, plus the number of additional Directors (the "Additional Directors") that would be required to ensure that the Convertible Preferred Stock Director

Designees plus the Additional Directors constitute a majority of the Board of Directors, and the holders of shares of Convertible Preferred Stock then outstanding shall be entitled, voting as a class on a one-vote-per-share basis (to the exclusion of the holders of all other securities and classes of capital stock of the Corporation), to elect such additional Directors. As soon as practicable after the commencement of the Voting Period, the Corporation shall call a special meeting of the holders of shares of Convertible Preferred Stock by mailing a notice of such special meeting to such holders, such meeting to be held not more than ten (10) days after the date of mailing of such notice. If the Corporation fails to send a notice, the meeting may be called by any such holder on like notice. The record date for determining the holders entitled to notice of and to vote at such special meeting shall be the close of business on the fifth business day preceding the day on which such notice is mailed. At any such special meeting and at each meeting of holders of shares of Convertible Preferred Stock held during a Voting Period at which Directors are to be elected (or with respect to any action by written consent in lieu of a meeting of stockholders), such holders, voting together as if a single class as contemplated by Section 4(b) (to the exclusion of the holders of all other securities and classes of capital stock of the Corporation), shall be entitled to elect the number of Directors prescribed in this Section C.3(b), and each share of Convertible Preferred Stock shall be entitled to one (1) vote (whether voted in person by the holder thereof or by proxy or pursuant to a shareholders' consent). The terms of office of all persons who are Directors of the Corporation at the time of a special meeting of the holders of Convertible Preferred Stock to elect Directors shall continue, notwithstanding the election at such meeting of the additional Directors that such holders are entitled to elect, and the persons so elected by such holders, together with the remaining incumbent Directors, shall constitute the duly elected Directors of the Corporation. Simultaneously with the termination of a Voting Period upon the redemption of all outstanding shares of Convertible Preferred Stock, the terms of office of the additional Directors elected by the holders of the Convertible Preferred Stock shall terminate, the remaining Directors shall constitute the Directors of the Corporation and the voting rights of such holders to elect additional Directors pursuant to this Section C.3(b) shall cease.

(vi) Dividend After Convertible Redemption Date. From and after a Convertible Preferred Redemption Date, no shares of Series C Preferred Stock subject to redemption shall be entitled to dividends, if any, as contemplated by Section C.1; provided, however, that in the event that shares of Series C Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section C.5(e), such shares shall continue to be entitled to dividends and interest thereon as provided in Sections C.3 and C.5(e) until the date on which such shares are actually redeemed by the Corporation.

(vii) Surrender of Certificates. Upon receipt of the applicable Convertible Preferred Redemption Price by certified check or wire transfer (in the event such price is to be paid in cash), each holder of shares of Series C Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer (or accompanied by duly executed stock powers relating thereto), or, in the event the certificate or certificates are lost, stolen or missing, shall deliver an affidavit or agreement satisfactory to the Corporation to

indemnify the Corporation from any loss incurred by it in connection therewith (an "Affidavit of Loss") with respect to such certificates at the principal executive office of the Corporation or the office of the transfer agent for the Series C Preferred Stock or such office or offices in the continental United States of an agent for redemption as may from time to time be designated by notice to the holders of Series C Preferred Stock, and each surrendered certificate shall be canceled and retired; provided, however, that if the Corporation is prohibited from redeeming all shares of Series C Preferred Stock as provided in Section C.5(e), or if the holders of a Majority Interest of the outstanding Series C Preferred Stock have requested the redemption of less than all of the outstanding shares of Series C Preferred Stock, the holder shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Series C Preferred Stock not so redeemed.

c. The Series C Preferred Stock is redeemable as follows:

(i) Redemption Events

(1) On or After the Later of April , 2004 or the First Anniversary of the Issuance of Redeemable Preferred Stock. Upon the election of the holder or holders of not less than a Majority Interest of the outstanding Redeemable Preferred Stock (or the holder or holders of not less than a Majority Interest of the outstanding Series C Preferred Stock proposing to convert the same in order to effect a redemption of the Redeemable Preferred Stock received upon such conversion hereunder, in each case treating the Redeemable Preferred Stock and the Series C Preferred Stock as single classes for this purpose), made at any time on or after the later of April, 2004 or the first anniversary of the Redeemable Original Issuance Date, the Corporation shall, redeem all (and not less than all, other than pursuant to this Section C.3(ii)(1) or Section C.3(ii)(3) below), of the outstanding shares of Redeemable Preferred Stock. The foregoing election shall be made by such holders giving the Corporation and each of the other holders of Redeemable Preferred Stock (or Series C Preferred Stock, as applicable) not less than fifteen (15) days prior written notice, which notice shall set forth the date for such redemption. Notwithstanding the foregoing, in the event of a redemption pursuant to this Section C.3(ii)(1), the Corporation shall have the option to redeem the Redeemable Preferred Stock, in two equal installments (pro rata among the holders of Redeemable Preferred Stock) with the second installment to be made on the first anniversary of the payment of the first installment.

(2) Upon Occurrence of Extraordinary Transactions. Upon the election of the holder or holders of not less than a Majority Interest of the outstanding Redeemable Preferred Stock (or Series C Preferred Stock proposing to convert the same in order to effect a redemption of the Redeemable Preferred Stock received upon such conversion hereunder, as applicable) to have the Redeemable Preferred Stock redeemed or otherwise to participate in connection with an Extraordinary Transaction occurring after the Convertible Original Issuance Date, then, as part of and as a condition to the effectiveness of such Extraordinary Transaction, the Corporation shall, on the effective date of such Extraordinary Transaction, either (x) redeem all (and not less than all, other than pursuant to Section C.3(c) below) of the outstanding shares of

Redeemable Preferred Stock for an amount equal to the Redeemable Liquidation Preference Amount, such amount to be payable in cash, and no payment shall be made to the holders of the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock or any stock ranking with regard to dividend rights, rights upon a Liquidation Event or an Extraordinary Transaction or redemption rights junior to the Redeemable Preferred Stock unless such amount is paid in full or (y) have such Redeemable Preferred Stock acquired in such Extraordinary Transaction, if applicable, on terms giving effect to the preferential amount to which the Redeemable Preferred Stock would be entitled in connection with a Liquidation Event hereunder or otherwise as agreed to by the holders of a Majority Interest of the outstanding Redeemable Preferred Stock. The foregoing election shall be made by such holders giving the Corporation and each other holder of Redeemable Preferred Stock (or Series C Preferred Stock, as applicable) not less than five (5) days prior written notice, which notice shall set forth the date for such redemption.

(3) On or After the First Anniversary of a QPO. Upon the election of the holder or holders of not less than a Majority Interest of the outstanding Redeemable Preferred Stock, made at any time on or after the first anniversary of a QPO, the Corporation shall redeem all (and not less than all, other than pursuant to Section C.5(c) below) of the outstanding shares of Redeemable Preferred Stock. The foregoing election shall be made by such holders giving the Corporation and each of the other holders of Redeemable Preferred Stock not less than fifteen (15) days prior written notice, which notice shall set forth the date for such redemption.

(4) Upon Election of the Corporation and the Holders. Upon the election of the Corporation and the holder or holders of not less than a Majority Interest of the outstanding Redeemable Preferred Stock, the Corporation shall redeem all (and not less than all, other than pursuant to Section C.3(c) below) of the outstanding shares of Redeemable Preferred Stock. The foregoing election shall be made by the Corporation and such holders giving each of the other holders of Redeemable Preferred Stock not less than fifteen (15) days prior written notice, which notice shall set forth the date for such redemption.

(ii) Purchase Date and Price. Upon the election of the holders of not less than a Majority Interest of the outstanding Redeemable Preferred Stock (and, in the case of Section C.3(a), the election of the Corporation) to cause the Corporation to redeem the Redeemable Preferred Stock or otherwise to participate in an Extraordinary Transaction pursuant to Section C.3(a)(i), (ii), (iii), or (iv), all holders of Redeemable Preferred Stock shall be deemed to have elected to cause the Redeemable Preferred Stock subject to such election to be so redeemed or to so participate. Any date upon which a redemption or other acquisition shall actually occur in accordance with Section C.3(a) shall be referred to as a "Redeemable Redemption Date." The redemption/purchase price for each share of Redeemable Preferred Stock redeemed pursuant to this Section C.3 shall be the per share Redeemable Liquidation Preference Amount (the "Redemption Price"); provided, however, that if at a Redeemable Redemption Date shares of Redeemable Preferred Stock are unable to be redeemed (as contemplated by Section C.3(c) below), then holders of Redeemable Preferred Stock shall also be entitled to interest and dividends pursuant to Sections C.2(c) and (d) below. The aggregate

Redemption Price shall be payable in cash in immediately available funds on the Redeemable Redemption Date. Until the aggregate Redemption Price, including any interest thereon, has been paid in cash for all shares of Redeemable Preferred Stock redeemed or purchased as of the applicable Redeemable Redemption Date: (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any capital stock of the Corporation; and (B) except as provided in Section C.7(d), no shares of capital stock of the Corporation (other than the Redeemable Preferred Stock in accordance with this Section C.3) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof. Notwithstanding the foregoing, in connection with a redemption or acquisition of the Redeemable Preferred Stock in an Extraordinary Transaction which is accounted for by the acquiring entity as a pooling of interests, the holders of shares of Redeemable Preferred Stock shall receive, upon election to sell the same if so required for the application of such accounting treatment, and in lieu of cash, the number of shares of common stock of such entity having a value equal to the amount otherwise payable to the holders of Redeemable Preferred Stock in such Extraordinary Transaction pursuant to the preceding sentence and having the same registered status or registration rights as any other shares in such transaction.

(iii) Redemption Prohibited. If, at a Redeemable Redemption Date, the Corporation is prohibited under the Delaware General Corporation Law from redeeming all shares of Redeemable Preferred Stock for which redemption is required hereunder, then it shall redeem such shares on a pro-rata basis among the holders of Redeemable Preferred Stock in proportion to the full respective redemption amounts to which they are entitled hereunder to the extent possible and shall redeem the remaining shares to be redeemed as soon as the Corporation is not prohibited from redeeming some or all of such shares under the Delaware General Corporation Law, subject to the last paragraph of Section C.7. The shares of Redeemable Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Section C. In the event that the Corporation fails for any reason to redeem shares for which redemption is required pursuant to this Section C.3(c), including without limitation due to a prohibition of such redemption under the Delaware General Corporation Law, then during the period from the applicable Convertible Preferred Redemption Date through the date on which such shares are redeemed, the applicable Convertible Preferred Base Liquidation Amount of such shares shall bear interest at the rate of eighteen percent (18%) per annum, with such interest to accrue daily in arrears and to be compounded annually; provided, however, that in no event shall such interest exceed the maximum permitted rate of interest under applicable law (the "Maximum Permitted Rate"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess; provided, however, that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the applicable Redemption Date. In the event the Corporation fails to redeem shares for which redemption is required pursuant to this Section C.3(c) within six (6) months after the date on which redemption is required, for any reason, and such failure thereafter continues (the period during which such failure shall continue being referred to herein as a "Voting Period"), the number of Directors constituting the Board of Directors shall be automatically increased by a number equal to the number of Directors then constituting the Board of Directors, plus the number of additional Directors (the "Additional Directors") that would be required to ensure that the Convertible Preferred Stock Director Designees plus the

Additional Directors constitute a majority of the Board of Directors, and the holders of shares of Convertible Preferred Stock then outstanding shall be entitled, voting as a class on a one-vote-per-share basis (to the exclusion of the holders of all other securities and classes of capital stock of the Corporation), to elect such additional Directors. As soon as practicable after the commencement of the Voting Period, the Corporation shall call a special meeting of the holders of shares of Convertible Preferred Stock by mailing a notice of such special meeting to such holders, such meeting to be held not more than ten (10) days after the date of mailing of such notice. If the Corporation fails to send a notice, the meeting may be called by any such holder on like notice. The record date for determining the holders entitled to notice of and to vote at such special meeting shall be the close of business on the fifth business day preceding the day on which such notice is mailed. At any such special meeting and at each meeting of holders of shares of Convertible Preferred Stock held during a Voting Period at which Directors are to be elected (or with respect to any action by written consent in lieu of a meeting of stockholders), such holders, voting together as if a single class as contemplated by Section 4(b) (to the exclusion of the holders of all other securities and classes of capital stock of the Corporation), shall be entitled to elect the number of Directors prescribed in this Section C.3(c), and each share of Convertible Preferred Stock shall be entitled to one (1) vote (whether voted in person by the holder thereof or by proxy or pursuant to a shareholders' consent). The terms of office of all persons who are Directors of the Corporation at the time of a special meeting of the holders of Convertible Preferred Stock to elect Directors shall continue, notwithstanding the election at such meeting of the additional Directors that such holders are entitled to elect, and the persons so elected by such holders, together with the remaining incumbent Directors, shall constitute the duly elected Directors of the Corporation. Simultaneously with the termination of a Voting Period upon the redemption of all outstanding shares of Convertible Preferred Stock, the terms of office of the additional Directors elected by the holders of the Convertible Preferred Stock shall terminate, the remaining Directors shall constitute the Directors of the Corporation and the voting rights of such holders to elect additional Directors pursuant to this Section C.3(c) shall cease.

(iv) Dividend After Redeemable Redemption Date. From and after the Redeemable Redemption Date, no shares of Redeemable Preferred Stock subject to redemption shall be entitled to any further dividends pursuant to Section C.1 hereof; provided, however, that in the event that shares of Redeemable Preferred Stock are unable to be redeemed and continue to be outstanding in accordance with Section C.3(c), such shares shall continue to be entitled to dividends and interest thereon as provided in Sections C.1 and C.3(c) until the date on which such shares are actually redeemed by the Corporation.

(1) Surrender of Certificates. Upon receipt of the applicable Redemption Price by certified check or wire transfer, each holder of shares of Redeemable Preferred Stock to be redeemed shall surrender the certificate or certificates representing such shares to the Corporation, duly assigned or endorsed for transfer (or accompanied by duly executed stock powers relating thereto), or shall deliver an Affidavit of Loss with respect to such certificates at the principal executive office of the Corporation or the office of the transfer agent for the Redeemable Preferred Stock or such office or offices in the continental United States of an agent for redemption as may from time to time be designated by notice to the holders of Redeemable Preferred Stock (or the holders of Series C Preferred Stock, as applicable), and each surrendered certificate shall be canceled and retired; provided, however, that if the Corporation is

prohibited from redeeming all shares of Redeemable Preferred Stock as provided in Section C.3(c), the holder shall not be required to surrender said certificate(s) to the Corporation until said holder has received a new stock certificate for those shares of Redeemable Preferred Stock not so redeemed.

4. Election of Directors; Voting.

a. Election of Directors.

(i) *Series C Preferred Stock.* The holders of outstanding shares of Series C Preferred Stock shall, voting together as a separate class, be entitled to elect four (4) Directors of the Corporation. Such Directors shall be the candidates receiving the greatest number of affirmative votes (with each holder of Series C Preferred Stock entitled to cast one vote for or against each candidate with respect to each share of Series C Preferred Stock held by such holder) of the outstanding shares of Series C Preferred Stock (the "Series C Preferred Stock Director Designees"), with votes cast against such candidates and votes withheld having no legal effect. The election of the Series C Preferred Stock Director Designees by the holders of the Series C Preferred Stock shall occur (i) at the annual meeting of holders of capital stock, (ii) at any special meeting of holders of capital stock, (iii) at any special meeting of holders of Series C Preferred Stock called by holders of a majority of the outstanding shares of Series C Preferred Stock or (iv) by the written consent of holders of not less than a majority of the voting power (a "Majority Interest") of the outstanding shares of Series C Preferred Stock. If at any time when any share of Series C Preferred Stock is outstanding any Series C Preferred Stock Director Designee should cease to be a Director for any reason, the vacancy shall only be filled by the vote or written consent of the holders of the outstanding shares of Series C Preferred Stock, voting together as a separate class, in the manner and on the basis specified above. The holders of outstanding shares of Series C Preferred Stock shall also be entitled to vote for all other Directors of the Corporation together with holders of all other shares of the Corporation's outstanding capital stock entitled to vote thereon, voting as a single class, with each outstanding share entitled to the same number of votes specified in Section C.2(b).

(ii) *Redeemable Preferred Stock.* The holders of outstanding shares of Redeemable Preferred Stock shall, voting together as a separate class, be entitled to elect one (1) Director. Such Director shall be the candidate receiving the greatest number of affirmative votes (with each holder of Redeemable Preferred Stock entitled to cast one vote for or against each candidate with respect to each share of Redeemable Preferred Stock held by such holder) of the outstanding shares of Redeemable Preferred Stock (the "Redeemable Preferred Stock Director Designee"), with votes cast against such candidate and votes withheld having no legal effect). The election of the Redeemable Preferred Stock Director Designee by the holders of the Redeemable Preferred Stock shall occur (i) at the annual meeting of holders of capital stock, (ii) at any special meeting of holders of capital stock, (iii) at any special meeting of holders of Redeemable Preferred Stock called by holders of a majority of the outstanding shares of Redeemable Preferred Stock or (iv) by the written consent of holders of not less than a Majority Interest of the outstanding shares of Redeemable Preferred Stock. Upon conversion of the Convertible Preferred

Stock, the holder or holders of not less than a majority in voting power of the outstanding Redeemable Preferred Stock shall designate one (1) of the Convertible Preferred Stock Director Designees then serving on the Corporation's board of directors to continue in such capacity as the Redeemable Preferred Stock Designee. If at any time when any share of Redeemable Preferred Stock is outstanding the Redeemable Preferred Stock Director Designee should cease to be a Director for any reason, the vacancy shall only be filled by the vote or written consent of holders of the outstanding shares of Redeemable Preferred Stock, voting together as a separate class, in the manner and on the basis specified above.

b. Voting.

(i) Each share of Series A, Series B and Series C Preferred Stock shall be entitled to the number of votes equal to the largest number of full shares of Common Stock into which such share of Preferred Stock could be converted pursuant to Section C.5 hereof on the record date for the vote or written consent of stockholders, if applicable. The holder of each share of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the by-laws of the Corporation and shall vote with holders of the Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders, excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Section C.6) or by law. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with any fraction equal or greater than one-half rounded upward to one).

(ii) Each share of Redeemable Preferred Stock shall be entitled to the number of votes equal to the quotient of (A) the Redeemable Liquidation Preference Amount per share of Redeemable Preferred Stock as of the record date for the applicable vote or the effective date of the written consent of stockholders, and (B) one hundred (100). The holder of each share of Redeemable Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the by-laws of the Corporation and shall vote with holders of the Common Stock, voting together as single class, upon all matters submitted to a vote of stockholders, excluding those matters required to be submitted to a class or series vote pursuant to the terms hereof (including, without limitation, Section C.7) or by law. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula shall be rounded to the nearest whole number (with any fraction equal or greater than one-half rounded upward to one).

5. Conversion. The holders of the Preferred Stock shall have the following conversion rights:

a. Series A and Series B Preferred Stock.

(i) Series A Preferred Stock. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, into such number of fully paid and nonassessable shares of Common Stock as is

determined by dividing the Original Series A Issue Price by the Series A Conversion Price (as defined below) applicable to such shares, respectively, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series A Preferred Stock (the "Series A Conversion Price") shall initially be \$0.606 per share of Common Stock. The initial Series A Conversion Price shall be adjusted as hereinafter provided.

(ii) Series B Preferred Stock. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the Series B Conversion Price (as defined below) applicable to such shares, respectively, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of the Series B Preferred Stock (the "Series B Conversion Price") shall initially be \$2.00 per share of Common Stock. The initial Series B Conversion Price shall be adjusted as hereinafter provided.

(iii) Automatic Conversion. Each share of Series A and Series B Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective applicable Conversion Price for such series, upon the earlier of (A) the date specified by written consent or agreement of holders of at least two-thirds (2/3) of the shares of such series of Preferred Stock then outstanding, or (B) immediately upon the closing of the sale of the Corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act") other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Corporation, the aggregate gross proceeds to the Corporation of which exceed Ten Million dollars (\$10,000,000).

b. Series C Preferred Stock

(i) Conversion Upon Election of Holders. The holders of shares of Series C Preferred Stock shall be entitled at any time, upon the written election of the holder or holders of not less than a Majority Interest of the outstanding shares of Series C Preferred Stock, without the payment of any additional consideration, to cause each (but not less than each) of the outstanding shares of Series C Preferred Stock to be automatically converted into (i) the number of fully paid and nonassessable shares of Common Stock which results from dividing the per share Series C Conversion Value (as defined in this Section C.5(b)) of the Series C Preferred Stock by the Series C Conversion Price (as defined in this Section C.5(b)) per share in effect for the Series C Preferred Stock at the time of conversion and (ii) one (1) fully paid and nonassessable share of Redeemable Preferred Stock. Upon the election to so convert in the manner and on the basis specified in the preceding sentence, all holders of the Series C Preferred Stock shall be deemed to have elected to voluntarily convert all outstanding shares of Series C Preferred Stock pursuant to this Section C.5. Upon the filing of this Second Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware, the "Series C Conversion Price" per share of Series C Preferred Stock shall be \$0.76 and the per share "Series C Conversion Value" of Series C Preferred Stock shall be \$0.76. The Series C Conversion Price per share of Series C Preferred Stock shall be subject to adjustment from time to time as

provided in Section C.6 hereof. The number of shares of Redeemable Preferred Stock into which a share of Series C Preferred Stock is convertible is hereinafter referred to as the "Redeemable Conversion Rate."

(ii) Automatic Conversion Upon a Qualified Public Offering.

Provided that the holders of not less than a Majority Interest of the outstanding Series C Preferred Stock have not elected to have all of the outstanding shares of Series C Preferred Stock redeemed in connection with a QPO (as defined in this Section C.5 in accordance with Section C.3, each share of Series C Preferred Stock that is not to be redeemed shall automatically be converted, without the payment of any additional consideration, into shares of Common Stock and Redeemable Preferred Stock as of, and in all cases subject to, the closing of the Corporation's first underwritten offering to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, provided that (i) such registration statement covers the offer and sale of Common Stock of which the aggregate net proceeds attributable to sales for the account of the Corporation is at least \$15,000,000, at a price per share equal to at least \$5.00 (as appropriately adjusted for any stock split, combination, reorganization, recapitalization, stock dividend, or similar event), and (ii) such Common Stock is listed for trading on either the New York Stock Exchange or the NASDAQ National Market (a "QPO" or a "Qualified Public Offering"); provided, that if a closing of a QPO occurs, all outstanding shares of Series C Preferred Stock shall be deemed to have been converted into shares of Common Stock and Redeemable Preferred Stock immediately prior to such closing. Any such conversion shall be at the Common Stock Conversion Rate and Redeemable Conversion Rate in effect upon the closing of a QPO, as applicable.

c. Procedure for Voluntary Conversion. Upon election to convert pursuant to Section C.5(a)(i) or (ii) or (b)(i), each holder of Series A, Series B or Series C Preferred Stock, respectively, shall surrender the certificate or certificates representing its Preferred Stock, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), at the principal executive office of the Corporation or the offices of the transfer agent for the Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the holders of the Preferred Stock by the Corporation, or shall deliver an Affidavit of Loss with respect to such certificates. The issuance by the Corporation of Common Stock upon a conversion of Series A or Series B Preferred Stock pursuant to Section C.5(a)(i) or (ii) or Common Stock and Redeemable Preferred Stock upon a conversion of Series C Preferred Stock pursuant to Section C.5(b)(i) hereof shall be effective as of the surrender of the certificate or certificates for the Preferred Stock to be converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or as of the delivery of an Affidavit of Loss. Upon surrender of a certificate representing Preferred Stock for conversion, or delivery of an Affidavit of Loss, the Corporation shall issue and send by hand delivery, by courier or by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, certificates for the number of shares of Common Stock and Redeemable Preferred Stock to which such holder shall be entitled upon conversion. The issuance of certificates for Common Stock and Redeemable Preferred Stock upon conversion of Preferred Stock will be made without charge to the holders of such shares for any issuance tax in respect thereof or other costs incurred by the Corporation in connection with such conversion and the related issuance of such stock. If a conversion of Series C Preferred Stock upon an

Extraordinary Transaction occurs, all outstanding shares of Series C Preferred Stock shall be deemed to have been converted into shares of Common Stock and Redeemable Preferred Stock immediately prior thereto, provided that the Corporation shall make appropriate provisions (x) for the Common Stock issued upon such conversion to be treated on the same basis as all other Common Stock in such Extraordinary Transaction and (y) for the payment of the Redeemable Liquidation Preference Amount in connection with any Liquidation Event or the redemption of the Redeemable Preferred Stock (issued upon such conversion) upon election of such redemption in connection with any Extraordinary Transaction, if applicable, as provided herein. In the event of any public offering constituting a QPO, the provisions of Section C.5(b) shall apply.

d. Procedure for Automatic Conversion.

(i) *Series A and Series B Preferred Stock.* Before any holder of Series A or Series B Preferred Stock shall be entitled to receive certificates for the shares of Common Stock receivable upon an automatic conversion, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such stock, and shall give written notice to the Corporation stating therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. In the absence of such designation, in the event of any automatic conversion of shares of Series A or Series B Preferred stock into Common Stock, the Corporation shall issue such shares in the same name or names as the Preferred Stock certificates were issued and hold such certificates pending delivery to the Corporation of the certificates representing the corresponding shares of Preferred Stock. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A or Series B Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A or Series B Preferred Stock to be converted (or, in connection with any automatic conversion, immediately prior to the occurrence of the event triggering such conversion), 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. On such date, all rights with respect to the Series A and Series B Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted. If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A or Series B Preferred Stock for conversion, 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 Series A or Series B Preferred Stock shall not be deemed to have converted such Series A or Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) *Series C Preferred Stock.* As of, and in all cases subject to, the closing of a QPO (the "Automatic Conversion Date"), all outstanding shares of Series C Preferred Stock shall be converted automatically into shares of Common Stock and Redeemable Preferred Stock at the applicable conversion rates specified in Section C.5 and without any further action by the holders of such shares and whether or not the certificates representing such

shares of Series C Preferred Stock are surrendered to the Corporation or its transfer agent; provided, however, that all holders of Series C Preferred Stock shall be given prior written notice of the occurrence of such QPO in accordance with Section C.7 hereof; and provided, further, that the holders of not less than a Majority Interest of the outstanding Series C Preferred Stock have not elected to have the Series C Preferred Stock redeemed in accordance with Section C.3. On the Automatic Conversion Date, all rights with respect to the Series C Preferred Stock so converted shall terminate, except any of the rights of the holders thereof upon surrender of their certificate or certificates therefor or delivery of an Affidavit of Loss thereof to receive certificates for the number of shares of Common Stock and Redeemable Preferred Stock into which such Series C Preferred Stock has been converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. Upon surrender of such certificates or Affidavit of Loss the Corporation shall issue and deliver to such holder, promptly (and in any event in such time as is sufficient to enable such holder to participate in such QPO at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock and Redeemable Preferred Stock into which the shares of the Series C Preferred Stock surrendered were convertible on the Automatic Conversion Date.

e. 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 and Redeemable Preferred Stock solely for the purpose of effecting the conversion of the shares of Preferred Stock such number of its shares of Common Stock and Redeemable Preferred Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock and Redeemable Preferred Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock and Redeemable Preferred Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging its best efforts to obtain the necessary stockholder approval, if any, as may be required to amend this Second Restated Certificate of Incorporation pursuant to this Section C.5.

f. No Closing of Transfer Books. The Corporation shall not close its books against the transfer of shares of Preferred Stock in any manner which would interfere with the timely conversion of any shares of Preferred Stock.

g. Adjustments to Preferred Conversion Price for Certain Diluting Issues.

(i) Special Definitions. For purposes of this Section C.5(g), the following definitions apply:

(1) "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below) whether outstanding as of the date hereof or subsequently issued.

(2) "Original Issue Date" shall mean with respect to the Series A, Series B and Series C Preferred Stock, the date on which a share of Series C Preferred Stock was first issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock or Designated Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section C.5(g)(iii), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(A) upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock;

(B) to officers, directors or employees of, or consultants to, the Corporation on terms approved by the Board of Directors (including a majority of the directors elected by the holders of Series C Preferred Stock, whether or not the shares are issued pursuant to a stock option or a stock purchase plan;

(C) as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock; or

(D) for which adjustment of the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price is made pursuant to Section C.5(h).

(ii) No Adjustment of Conversion Price. Notwithstanding any provision herein to the contrary, no adjustment in the applicable Conversion Price for a series of Preferred Stock shall be made in respect of the issuance of (A) any shares of Series C Preferred Stock at the price per share greater than or equal to the price at which such shares were first issued; (B) the issuance of any additional shares of Series C Preferred Stock to compensate for any adjustment in the capitalization of the Corporation as a result of the representations relating to capitalization made pursuant to the agreement through which the Series C Preferred Stock was first issued; or (C) Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section C.5(g)(v) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Conversion Price for such series of Preferred Stock in effect on the date of, and immediately prior, to such issue.

(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 Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then 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 designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional

Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(1) no further adjustments in the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon 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 increase in the consideration payable to the Corporation, or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the applicable Series A Conversion Price, Series B Conversion Price or Series C Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price, Series B Conversion Price or Series C Conversion Price shall effect Common Stock previously issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing any applicable Series A Conversion Price, Series B Conversion Price or Series C Conversion Price to an amount which exceeds the lower of (a) such Series A Conversion Price, Series B Conversion Price or Series C Conversion Price, respectively, on the original adjustment date, or (b) the applicable Series A Conversion Price, Series B Conversion Price or Series C Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event this Corporation, at any time after the Original Issue Date shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.5(g)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price with respect to any series of Preferred Stock in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price of such series 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 of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price of such series in effect immediately prior to such issuance, 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 Stock so issued. For the purpose of the above

calculation, the number of shares of Common Stock outstanding immediately prior to such issue shall be calculated as if all shares of Preferred Stock had been fully converted into shares of Common Stock as of such date but shall not include shares of Common Stock issuable upon Convertible Securities other than the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock.

(v) Determination of Consideration. For purposes of this Section C.5(g), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock 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 excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board; and

(C) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section C.5(g)(iii), relating to Options and Convertible Securities shall be determined by dividing:

(A) 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 designed to protect against dilution) 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

(B) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

h. Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that this Corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any

dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise, other than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the applicable Conversion Price for each series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that this Corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

i. Adjustments for Reclassification and Reorganization. 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 sub-division or combination of shares provided for in Section C.5(e) above or a merger or other reorganization referred to in Section C.5(j) below), the applicable Conversion Price for each Series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the respective series of Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the respective series of Preferred Stock immediately before that change.

j. No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section C.5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

k. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section C.5, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate executed by the Corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price for the applicable series of Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the applicable series of Preferred Stock.

1. Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or 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 offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall send to the holders of Preferred Stock: (1) at least twenty (20) days prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and (2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

m. Issue Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

n. Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Corporation's Board of Directors).

o. Notices. Any notice required by the provisions of this Section C.5 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

6. Covenants.

a. Designated Preferred Stock. So long as any shares of Designated Preferred Stock (or Redeemable Preferred Stock, as applicable) shall be outstanding, the Corporation shall not, without first having provided written notice of such proposed action to each holder of outstanding shares of Designated Preferred Stock (or Redeemable Preferred Stock, as applicable) and having obtained the affirmative vote or written consent of the holders of at least a majority of the then outstanding shares of Designated Preferred Stock (or

Redeemable Preferred Stock, as applicable), voting as a single class, with each share of Designated Preferred Stock (or Redeemable Preferred Stock, as applicable) entitling the holder thereof to one vote per share of Designated Preferred Stock (or Redeemable Preferred Stock, as applicable) held by such holder:

(i) amend, alter or repeal any provision of, or add any provision to, Section C of this Second Restated Certificate of Incorporation, or otherwise amend, alter or repeal any provision of, or add any provision to, this Second Restated Certificate of Incorporation or the Corporation's by-laws if such latter action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any of the Designated Preferred Stock or the Redeemable Preferred Stock;

(ii) create, obligate itself to create, authorize or issue any new class or classes of stock or new series of common stock or preferred stock or any security convertible into or evidencing the right to purchase shares of any new class or series of common stock or preferred stock or any new capital stock of the Corporation having preference over or being on parity with the Series C Preferred Stock or the Redeemable Preferred Stock in any respect;

(iii) declare or pay any dividends (other than stock dividends) or make any distributions of cash, property or securities of the Corporation in respect of its capital stock, or apply any of its assets to the redemption, retirement, purchase or other acquisition of its capital stock, directly or indirectly, through subsidiaries or otherwise, except for (i) the redemption of Series C Preferred Stock or Redeemable Preferred Stock pursuant to and as provided in this Second Restated Certificate of Incorporation, and (ii) the redemption of shares of Common Stock from employees, officers or Directors of, or consultants, advisors or independent contractors to, the Corporation or any of its subsidiaries pursuant to an agreement containing vesting and/or repurchase provisions approved by the Board of Directors of the Corporation or a committee thereof;

(iv) effect (i) any Liquidation Event, (ii) any Extraordinary Transaction or other sale or transfer of all or any substantial portion of the properties and assets of any subsidiary of the Corporation, (iii) any debt or equity financing, (iv) any recapitalization of the Corporation or (v) any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of; or

(v) effect any taxable transaction under Section 305 of the Internal Revenue Code of 1986, as amended

b. Series C Preferred Stock. So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not, without first having provided written notice of such proposed action to each holder of outstanding shares of Series C Preferred Stock and having obtained the affirmative vote or written consent of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock:

(i) reclassify any capital stock;

(ii) enter into any transaction involving payments to be made to or by the Corporation for the benefit of any of its shareholders, Directors, officers, key management employees or any person controlling, controlled by, under common control with or otherwise affiliated with, or a member of a family of, any such person (an "Affiliate") on other than on an arm's length basis or on terms and conditions less favorable to the Corporation than could be obtained from unrelated persons, other than fees paid to a Director in his or her capacity as a Director or a member of a committee of the Board of Directors and compensation authorized by the Compensation Committee of the Board of Directors (and approved by the Board of Directors) to be paid to an Affiliate for services performed by such Affiliate;

(iii) acquire, create or form any subsidiary that is not wholly-owned by the Corporation.

(iv) authorize or engage in any acquisition of capital stock, interests or assets in which the value of the consideration, whether in cash or otherwise exceeds \$2,500,000 (but excluding leasing of equipment in the ordinary course);

(v) alter the size of, or the election procedure relating to, the Board of Directors; or

(vi) redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purposes) any share or Shares of Preferred Stock otherwise than by redemption or conversion pursuant to Sections C.3 and C.5 hereof.

Further, the Corporation shall not, by amendment of this Second Restated Certificate of Incorporation or through any Extraordinary Transaction or other reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, agreement or any other voluntary action, 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 C and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Preferred Stock and the Redeemable Preferred Stock against impairment. Without limitation of the foregoing, the Corporation shall take such action as shall be necessary or appropriate, to the extent reasonably within its control, to remove promptly any impediments to its ability to redeem Series C Preferred Stock or Redeemable Preferred Stock under the circumstances contemplated by Section C.I.3 or C.II.3. Any successor to the Corporation shall agree, as a condition to such succession, to carry out and observe the obligations of the Corporation hereunder with respect to the Preferred Stock and the Redeemable Preferred Stock.

7. Notice.

a. Liquidation Events, Extraordinary Transactions, Etc. In the event (i) the Corporation establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or who are entitled to vote at a meeting (or by written consent) in connection with any of the transactions identified in clause (ii) hereof, or (ii) any Liquidation Event (as defined in Section C.2), any Extraordinary Transaction (as defined

in Section C.3), any QPO (as defined in Section C.5) or public offering pursuant to Section C.5(iii) becomes reasonably likely to occur, the Corporation shall mail or cause to be mailed by first class mail (postage prepaid) to each holder of Preferred Stock and Redeemable Preferred Stock at least twenty (20) days prior to such record date specified therein or the expected effective date of any such transaction, whichever is earlier, a notice specifying (A) the date of such record date for the purpose of such dividend or distribution or meeting or consent and a description of such dividend or distribution or the action to be taken at such meeting or by such consent, (B) the date on which any such Liquidation Event, Extraordinary Transaction, QPO or other public offering is expected to become effective, and (C) the date on which the books of the Corporation shall close or a record shall be taken with respect to any such event.

b. Waiver of Notice. The holder or holders of not less than a majority of the outstanding shares of any series of Preferred Stock or Redeemable Preferred Stock may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of the holders of such series of Preferred Stock or Redeemable Preferred Stock, as applicable, and any such waiver shall be binding upon all holders of such securities.

c. General. In the event that the Corporation provides any notice, report or statement to any holder of Common Stock, Series A Preferred Stock or Series B Preferred Stock, the Corporation shall at the same time provide a copy of any such notice, report or statement to each holder of outstanding shares of Series C Preferred Stock (or Redeemable Preferred Stock, as applicable).

8. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

9. Contractual Rights of Holders. The various provisions set forth herein for the benefit of the holders of the Preferred Stock and Redeemable Preferred Stock shall be deemed contract rights enforceable by them, including without limitation, one or more actions for specific performance.

10. Notice to Holders of Redeemable Preferred Stock. In the event that the Corporation provides or is required to provide notice to any holder of Preferred Stock and Common Stock in accordance with the provisions of this Second Restated Certificate of Incorporation (including the provisions of Sections C.3(c) and C.8) and/or the Corporation's by-laws, the Corporation shall at the same time provide a copy of any such notice to each holder of outstanding shares of Redeemable Preferred Stock.

11. No Reissuance of Redeemable Preferred Stock. No share or shares of Redeemable Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion, exchange or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

12. Covenants. So long as any shares of Redeemable Preferred Stock shall be outstanding the provisions of Section C.7 shall apply to all shares of Redeemable Preferred Stock as if such shares were shares of Series C Preferred Stock.