

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
IntelliDOT Corporation		08/21/2009	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	PatientSafe Solutions, Inc.		
Street Address:	5375 Mira Sorrento Place, Suite 500		
City:	San Diego		
State/Country:	CALIFORNIA		
Postal Code:	92121		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	3402847	INTELLIDOT	
Registration Number:	3410260	INTELLIDOT	
Registration Number:	3393018	CARET	
Serial Number:	77753456	PATIENTTOUCH	
CORRESPONDENCE DATA			
Fax Number:	(949)760-9502		
Phone:	(949) 760-0404		
Email:	efiling@kmob.com		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Correspondent Name:	Jeffrey Van Hoosear		
Address Line 1:	Knobbe, Martens, Olson & Bear, LLP		
Address Line 2:	2040 Main Street, 14th Floor		
Address Line 4:	Irvine, CALIFORNIA 92614		
ATTORNEY DOCKET NUMBER:	IDOT.007T/ 010T/ 015T/038		

OP \$115.00 3402847

900206616

**TRADEMARK
 REEL: 004657 FRAME: 0154**

NAME OF SUBMITTER:	Jeff Van Hoosear
Signature:	/JVH/
Date:	11/08/2011
<p>Total Attachments: 23</p> <p>source=Change of Name#page1.tif source=Change of Name#page2.tif source=Change of Name#page3.tif source=Change of Name#page4.tif source=Change of Name#page5.tif source=Change of Name#page6.tif source=Change of Name#page7.tif source=Change of Name#page8.tif source=Change of Name#page9.tif source=Change of Name#page10.tif source=Change of Name#page11.tif source=Change of Name#page12.tif source=Change of Name#page13.tif source=Change of Name#page14.tif source=Change of Name#page15.tif source=Change of Name#page16.tif source=Change of Name#page17.tif source=Change of Name#page18.tif source=Change of Name#page19.tif source=Change of Name#page20.tif source=Change of Name#page21.tif source=Change of Name#page22.tif source=Change of Name#page23.tif</p>	

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "INTELLIDOT CORPORATION", CHANGING ITS NAME FROM "INTELLIDOT CORPORATION" TO "PATIENTSAFE SOLUTIONS, INC.", FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF AUGUST, A.D. 2009, AT 9:26 O'CLOCK A.M.


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

3153734 8100

090796665

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




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7488057

DATE: 08-21-09

TRADEMARK
REEL: 004657 FRAME: 0156

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
INTELLIDOT CORPORATION

IntelliDOT Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*Corporation*"), does hereby certify that:

1. The original name of this Corporation was FindtheDOT, Inc. and the Certificate of Incorporation of the Corporation was initially filed with the Secretary of State of Delaware on January 3, 2000.
2. The Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.
3. The 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 Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by the President and Chief Executive Officer of the Corporation on August 21, 2009.

IntelliDOT Corporation

By: _____



James M. Sweeney
President and Chief Executive Officer

EXHIBIT A

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
PatientSafe Solutions, Inc.**

ARTICLE 1. NAME

The name of the Corporation is PatientSafe Solutions, Inc. (the "*Corporation*").

ARTICLE 2. ADDRESS

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

ARTICLE 3. PURPOSE

The purpose of the Corporation is to engage in any lawful acts or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as amended from time to time.

ARTICLE 4. AUTHORIZED CAPITAL

Effective at the time of filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "*Filing Date*"), each one share of Common Stock (as defined below) then issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted into 0.346 shares of Common Stock (the "*Reverse Split*"); *provided, however*, that this Corporation shall issue no fractional shares of Common Stock as a result of the Reverse Split, but shall instead pay to any stockholder who would be entitled to receive a fractional share as a result of the actions set forth herein a sum in cash equal to the fair market value of the shares constituting such fractional share as determined by the Board of Directors of the Corporation (the "*Board of Directors*"). The Reverse Split shall occur whether or not the certificates representing such shares of Common Stock are surrendered to the Corporation or its transfer agent. The Reverse Split shall be effected on a certificate-by-certificate basis. All share numbers in this Amended and Restated Certificate of Incorporation give effect to the Reverse Split.

The Corporation is authorized to issue two classes of shares, designated "Common Stock" and "Preferred Stock" respectively. The total number of shares of Common Stock which the Corporation is authorized to issue is 60,000,000, with a par value of \$0.0001 per share (the "*Common Stock*"), and the total number of shares of Preferred Stock which the Corporation is authorized to issue is 69,953,256, with a par value of \$0.0001 per share. 4,685,256 of the shares of Preferred Stock are designated "Series A Preferred Stock" (the "*Series A Preferred*"),

10,200,000 of the shares of Preferred Stock are designated "Series B Preferred Stock" (the "*Series B Preferred*"), 9,680,000 of the shares of Preferred Stock are designated "Series C Preferred Stock" (the "*Series C Preferred*"), 5,650,000 of the shares of Preferred Stock are designated "Series D Preferred Stock" (the "*Series D Preferred*" and, together with the Series A Preferred, Series B Preferred and Series C Preferred, the "*Junior Series Preferred*"), 5,037,000 of the shares of Preferred Stock are designated "Series A-1 Preferred Stock" (the "*Series A-1 Preferred*"), 10,001,000 of the shares of Preferred Stock are designated "Series A-2 Preferred Stock" (the "*Series A-2 Preferred*" and, together with the Series A-1 Preferred, the "*Mezzanine Preferred*") and 24,700,000 of the shares of Preferred Stock are designated "Series B-1 Preferred Stock" (the "*Series B-1 Preferred*" and, together with the Mezzanine Preferred, the "*Series Preferred*"). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if-converted-to-Common Stock basis).

ARTICLE 5. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF CAPITAL STOCK

The relative rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes of the shares of capital stock or the holders thereof are as follows:

1. *Dividend Preference.*

(a) The holders of Series B-1 Preferred shall be entitled to receive, out of funds legally available therefor, dividends at an annual rate equal to eight percent (8%) of the Original Series B-1 Issue Price (as defined below) per share held by them, payable when and if declared by the Board of Directors in preference and priority to the payment of dividends on any shares of Mezzanine Preferred and Common Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries at no greater than original cost pursuant to contractual arrangements). In the event dividends are paid to the holders of Series B-1 Preferred that are less than the full amounts to which such holders are entitled pursuant to this Section 1(a), such holders shall share ratably in the total amount of dividends paid according to the respective amounts due each such holder if such dividends were paid in full.

(b) After the payment in full of any dividends pursuant to Section 1(a) above, the holders of the Mezzanine Preferred shall be entitled to receive, out of funds legally available therefor, dividends at an annual rate equal to eight percent (8%) of the applicable Original Issue Price (as defined below) per share held by them, payable when and if declared by the Board of Directors, in preference and priority to the payment of dividends on any shares of Common Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries at no greater than original cost pursuant to contractual arrangements). In the event dividends are paid to the holders of Mezzanine Preferred that are less than the full amounts to which such holders are entitled pursuant to this Section 1(b), such

holders shall share ratably in the total amount of dividends paid according to the respective amounts due each such holder if such dividends were paid in full.

(c) The "*Original Issue Price*" of the: (i) Series A-1 Preferred shall be \$1.00 (the "*Original Series A-1 Issue Price*"); (ii) Series A-2 Preferred shall be \$1.00 (the "*Original Series A-2 Issue Price*") and (iii) Series B-1 Preferred shall be \$1.00 (the "*Original Series B-1 Issue Price*") in each case as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the Filing Date.

(d) The dividends payable to the holders of the Series Preferred shall not be cumulative, and no right shall accrue to the holders of the Series Preferred by reason of the fact that dividends on the Series Preferred are not declared or paid in any previous fiscal year of the Corporation, whether or not the earnings of the Corporation in that previous fiscal year were sufficient to pay such dividends in whole or in part.

(e) After payment in full of dividends to the holders of Series Preferred as set forth above, dividends may be declared and distributed among all holders of Common Stock; *provided, however*, that in the event dividends are paid on any share of Common Stock (except dividends payable solely in shares of Common Stock), the Corporation shall pay an additional dividend on all outstanding shares of Series B-1 Preferred in a per share amount equal (on an as-if-converted-to-Common Stock basis) to the amount paid or set aside for each share of Common Stock.

(f) In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Series Preferred (as provided in Section 4 of this Article 5), the Corporation shall, at the option of the Corporation, pay in cash to the holder(s) of Series Preferred subject to conversion the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Section 4 of this Article 5.

(g) The holders of the Series Preferred expressly waive their rights, if any, as described in California Code Sections 502, 503 and 506 as they relate to repurchases of shares of Common Stock (i) at no greater than original cost upon termination of employment or service as a consultant or director, or (ii) in exercise of the Corporation's right of first refusal to repurchase such shares upon a proposed transfer.

2. *Liquidation Preference.*

(a) In the event of (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or not, (ii) the sale, lease, exclusive non-ordinary course license, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Corporation, (iii) the acquisition of the Corporation by another entity or person by means of consolidation, corporate reorganizations, merger or other transaction or series of related transactions in which stockholders of the Corporation immediately prior to such transaction do not own at least a majority of the outstanding securities of the successor entity or person immediately following such transaction (iv) the closing of any other transaction or series of

related transactions in which the stockholders of the Corporation immediately prior to such transaction(s) own less than fifty percent (50%) of the voting power of the Corporation immediately after such transaction(s) or (v) a transaction or series of related transactions (whether by merger, consolidation or otherwise) in which a single holder (or a group of holders under common control) of outstanding stock of the Corporation immediately prior to such transaction or series of related transactions acquires all or a majority of the voting power of the successor (which may be the Corporation itself) to the business of the Corporation (each a "**Liquidation Event**") (provided, however, that a Liquidation Event shall not include (x) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received for operating purposes by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof or (y) any transaction effected exclusively to change the domicile of the Corporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Corporation's securities immediately prior to such transaction) distributions to the Corporation's stockholders shall be made in the following manner:

(i) Each holder of Series B-1 Preferred 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 Mezzanine Preferred or Common Stock, by reason of its ownership of such stock, an amount per share equal to the Original Series B-1 Issue Price, plus an amount equal to all declared but unpaid dividends on such shares of Series B-1 Preferred (the "**Series B-1 Preference**"). If upon the occurrence of a Liquidation Event, the assets and funds available to be distributed among the holders of Series B-1 Preferred shall be insufficient to permit the payment to such holders of the full Series B-1 Preference, then the entire assets and funds available to be distributed among the holders of the Series B-1 Preferred shall be distributed ratably based on the total Series B-1 Preference due each such holder under this Section 2(a)(i).

(ii) After payment has been made to the holders of Series B-1 Preferred of the full amounts to which they are entitled pursuant to Section 2(a)(i) above, each holder of Series A-2 Preferred 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 Series A-1 Preferred or Common Stock, by reason of their ownership of such stock, an amount per share equal to the Original Series A-2 Issue Price, plus an amount equal to all declared but unpaid dividends on such shares of Series A-2 Preferred (the "**Series A-2 Preference**"). If, upon the occurrence of a Liquidation Event, after payment has been made to the holders of Series B-1 Preferred of the full amounts to which they are entitled pursuant to Section 2(a)(i) above, the assets and funds available to be distributed among the holders of Series A-2 Preferred shall be insufficient to permit the payment to such holders of the full Series A-2 Preference, then the entire assets and funds of the Corporation legally available for distribution to the holders of Series A-2 Preferred shall be distributed ratably based on the total Series A-2 Preference due each such holder under this Section 2(a)(ii).

(iii) After payment has been made to the holders of Series B-1 Preferred and Series A-2 Preferred of the full amounts to which they are entitled pursuant to Sections 2(a)(i) and 2(a)(ii) above, each holder of Series A-1 Preferred 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 Common Stock, by reason of their ownership of such stock, an amount per share equal to the Original Series A-1 Issue Price, plus an amount equal to all declared but unpaid dividends on such shares of Series A-1 Preferred (the "*Series A-1 Preference*"). If, upon the occurrence of a Liquidation Event, after payment has been made to the holders of Series B-1 Preferred and Series A-2 Preferred of the full amounts to which they are entitled pursuant to Sections 2(a)(i) and 2(a)(ii) above, the assets and funds available to be distributed among the holders of Series A-1 Preferred shall be insufficient to permit the payment to such holders of the full Series A-1 Preference, then the entire assets and funds of the Corporation legally available for distribution to the holders of Series A-1 Preferred shall be distributed ratably based on the total Series A-1 Preference due each such holder under this Section 2(a)(iii).

(iv) After payment has been made to the holders of Series Preferred of the full amounts to which they are entitled pursuant to Sections 2(a)(i), 2(a)(ii) and 2(a)(iii) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed ratably among the holders of Common Stock and Series B-1 Preferred based on the number of shares of Common Stock held by each such holder or issuable upon conversion of the Series B-1 Preferred held by each such holder only until such time as such holders of Series B-1 Preferred have received pursuant to Section 2(a)(i) above and this Section 2(a)(iv) an aggregate amount per share of the Series B-1 Preferred equal to four times the Original Series B-1 Issue Price; thereafter, the remaining assets of the Corporation available for distribution to stockholders shall be distributed ratably among the holders of Common Stock.

(b) Each holder of Series Preferred shall be deemed to have consented to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries at no greater than original cost upon termination of their employment or services pursuant to agreements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons.

(c) The value of securities and property paid or distributed pursuant to this Section 2 shall be computed at fair market value at the time made available to stockholders, all as determined by the Board of Directors in the good faith exercise of its reasonable business judgment, provided that any securities shall be valued as follows:

(i) The value of securities not subject to investment letter or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be:

(1) if traded on a national securities exchange or listed on the Nasdaq Stock Market, 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 (or portion thereof) ending three days prior to the closing;

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

(3) if there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the value determined as above in Section 2(c)(i) of this Article 5 to reflect the approximate fair market value thereof, as determined by the Board of Directors.

(d) Nothing hereinabove set forth shall affect in any way the right of each holder of Series Preferred to convert such shares at any time and from time to time into Common Stock in accordance with Section 4 of this Article 5.

3. *Voting Rights.*

(a) Except as otherwise required by law or hereunder, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or the effective date of any written consent of stockholders, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number (with one-half being rounded upward). Holders of Common Stock and Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Corporation's Bylaws. For the sake of clarity, to the extent permitted by law (including, without limitation, the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware), the Series A-1 Preferred and the Series A-2 Preferred shall be treated as a single series of stock and not as a separate series of stock with respect to all matters on which the holders of Series A-1 Preferred and Series A-2 Preferred are entitled to vote. The Series A-2 Preferred shall have the same rights, preferences, privileges and restrictions as the Series A-1 Preferred, except as otherwise provided in Section 2 of this Article 5.

(b) Notwithstanding the provisions of Section 3(a) above, (A) at each annual or special meeting called for the purpose of electing directors prior to the Series B-1 Closing (as defined in Section 4(e) of this Article 5), (i) the holders of Mezzanine Preferred, voting together as a single class on an as converted basis, shall have the exclusive and special right to elect three members of the Board of Directors, (ii) the holders of Common Stock, voting together as a separate class, shall be entitled to elect one member of the Board of Directors, and (iii) the

remaining members of the Board of Directors shall be elected by the holders of Common Stock and Series Preferred, voting together as a single class on an as converted basis, and (B) at each annual or special meeting called for the purpose of electing directors following the Series B-1 Closing, (i) the holders of Mezzanine Preferred, voting together as a single class on an as converted basis, shall have the exclusive and special right to elect two members of the Board of Directors, (ii) the holders of Series B-1 Preferred, voting together as a separate class, shall have the exclusive and special right to elect three members of the Board of Directors, (iii) the holders of Common Stock, voting together as a separate class, shall be entitled to elect one member of the Board of Directors, and (iv) the remaining members of the Board of Directors shall be elected by the holders of Common Stock and Series Preferred, voting together as a single class on an as converted basis. The provisions of this Section 3(b) shall expire and be of no further force or effect with respect to the right of the holders of Mezzanine Preferred to elect directors pursuant to clauses (A)(i) and (B)(i) above if at any time fewer than 1,000,000 shares of Mezzanine Preferred (appropriately adjusted for combinations, consolidations, subdivisions, stock splits and the like after the Filing Date with respect to such shares), respectively, remain outstanding. The provisions of this Section 3(b) shall expire and be of no further force or effect with respect to the right of the holders of Series B-1 Preferred to elect directors pursuant to clause (B)(ii) above, if at any time after the date that the first share of Series B-1 Preferred is issued (the "*Issue Date*") fewer than 1,000,000 shares of Series B-1 Preferred (appropriately adjusted for combinations, consolidations, subdivisions, stock splits and the like after the Issue Date with respect to such shares) remain outstanding. In the case of any vacancy in the office of a director elected by a specified group of stockholders, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of the shares of such specified group given at a special meeting of such stockholders duly called or by an action by written consent for that purpose, provided that in the absence of such stockholder action, such vacancy shall be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director then in office. Any director who shall have been elected by a specified group of stockholders may be removed during the aforesaid term of office, either for or without cause, by, and only by, the affirmative vote of the holders of the shares of such specified group, given at a special meeting of such stockholders duly called or by an action by written consent for that purpose, and any such vacancy thereby created, may be filled by the vote of the holders of the shares of such specified group represented at such meeting or in such consent.

(c) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Corporation is subject to Section 2115 of the California General Corporation Law ("*CGCL*"). During such time or times that the Corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes,

all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(d) During such time or times that the Corporation is subject to Section 2115(b) of the CGCL, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote for that director as provided above; *provided, however*, that unless the entire Board of Directors is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

4. *Conversion Rights.*

The holders of Series Preferred shall have conversion rights as follows:

(a) *Right to Convert.* Each share of Series Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Series Preferred, into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Issue Price for such shares of Series Preferred by the then effective Conversion Price for such Series Preferred, determined as hereinafter provided, in effect at the time of conversion. The Conversion Price for the Series A-1 Preferred (the "*Series A-1 Conversion Price*"), the Conversion Price of the Series A-2 Preferred (the "*Series A-2 Conversion Price*") and the Conversion Price of the Series B-1 Preferred (the "*Series B-1 Conversion Price*") shall initially be the Original Series A-1 Issue Price, the Original Series A-2 Issue Price and the Original Series B-1 Issue Price, respectively. The Series A-1 Conversion Price, Series A-2 Conversion Price and Series B-1 Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(b) *Automatic Conversion.*

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock at the then effective applicable Conversion Price upon the earliest to occur of: (i) with respect to the Mezzanine Preferred, the affirmative vote or written consent of the holders of a majority of the then outstanding shares of the Mezzanine Preferred, voting together as a single class on an as converted basis, (ii) with respect to the Series B-1 Preferred, the affirmative vote or written consent of the holders of at least seventy percent (70%) of the then outstanding shares of Series B-1 Preferred, voting together as a separate class, or (iii) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*"), covering the offer and sale of Common Stock for the account of the Corporation to the public with aggregate proceeds to the Corporation of at least \$50,000,000 (before deduction for

underwriters' commissions and expenses) and a per share price not less than \$3.00 per share (appropriately adjusted for combinations, consolidations, subdivisions, stock splits or other similar transaction after the Filing Date) (a "*Qualified Public Offering*"). In the event of a conversion of the Series Preferred pursuant to this Section 4(b) upon a Qualified Public Offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of such Series Preferred shall not be deemed to have converted such Series Preferred until immediately prior to the closing of such sale of securities.

(c) *Mechanics of Conversion.* No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair value of such fractional share, as determined in good faith by the Board of Directors. Before any holder of Series Preferred shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series Preferred, and shall give written notice to the Corporation at such office that it elects to convert the same; *provided, however*, that in the event of a conversion pursuant to Section 4(b) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series Preferred to be converted, or in the case of an automatic conversion pursuant to Section 4(b) above, on the date of closing of the offering, the date of the affirmative vote or written consent or the date of conversion of the Series Preferred, as applicable, 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.

(d) *Adjustments to Conversion Price.*

(i) *Adjustments for Dividends, Splits, Subdivisions, Combinations, or Consolidations of Common Stock.* In the event the outstanding shares of Common Stock shall be increased by stock dividend payable in Common Stock, stock split, subdivision or other similar transaction occurring after the Filing Date or, with respect to the Series B-1 Preferred, the Issue Date, into a greater number of shares of Common Stock, the Series A-1 Conversion Price,

Series A-2 Conversion Price and Series B-1 Conversion Price then in effect, as applicable, shall, concurrently with the effectiveness of such event, be decreased in proportion to the percentage increase in the outstanding number of shares of Common Stock. In the event the outstanding shares of Common Stock shall be decreased by reverse stock split, combination, consolidation or other similar transaction occurring after the Filing Date or, with respect to the Series B-1 Preferred, the Issue Date, into a lesser number of shares of Common Stock, the Series A-1 Conversion Price, Series A-2 Conversion Price and Series B-1 Conversion Price then in effect, as applicable, shall, concurrently with the effectiveness of such event, be increased in proportion to the percentage decrease in the outstanding number of shares of Common Stock.

(ii) *Adjustments for Other Distributions.* In the event the Corporation at any time or from time to time after the Filing Date or, with respect to the Series B-1 Preferred, the Issue Date, makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution payable in securities of the Corporation other than shares of Common Stock and other than as otherwise adjusted in this Section 4, then and in each such event provision shall be made so that the holders of Series Preferred shall receive upon conversion thereof, the amount of securities of the Corporation which they would have received had their Series Preferred been converted into Common Stock on the date of such event.

(iii) *Adjustments for Reclassification, Exchange and Substitution.* If at any time or from time to time after the Filing Date or, with respect to the Series B-1 Preferred, the Issue Date, the Common Stock issuable upon conversion of the Series Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, recapitalization, reclassification, or otherwise (other than a subdivision or combination of shares provided for above), the Series A-1 Conversion Price, Series A-2 Conversion Price and Series B-1 Conversion Price then in effect, as applicable, shall, concurrently with the effectiveness of such reorganization, recapitalization or reclassification, be proportionately adjusted such that the Series A-1 Preferred, Series A-2 Preferred and Series B-1 Preferred, respectively and as applicable, 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 such Series Preferred immediately before that change.

(iv) *Adjustments on Issuance of Additional Stock.*

(1) *Adjustments to Conversion Price.* If the Corporation, at any time after the Issue Date shall issue Additional Stock (as defined below) without consideration or for a consideration per share less than the Series B-1 Conversion Price with respect to any shares of Series B-1 Preferred in effect on the date of and immediately prior to such issue, then and in such event, the Series B-1 Conversion Price for such shares of Series B-1 Preferred shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Series B-1 Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of shares of Additional Stock so issued would purchase at

such Series B-1 Conversion Price 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 shares of Additional Stock so issued; *provided that* for purposes of this Section 4(d)(iv)(1), all shares of Common Stock issuable upon conversion of the outstanding Series Preferred, all shares of Common Stock issuable upon exercise of outstanding stock options, and all shares of Common Stock issuable upon exercise or conversion of any other outstanding security or debt instrument of the Corporation shall be deemed to be Common Stock outstanding.

(2) **Definitions.** For purposes of this Section 4(d)(iv), the following definitions apply:

(a) **"Additional Stock"** shall mean all Common Stock issued or deemed to be issued pursuant to Section 4(d)(iv)(3) below by the Corporation after the Issue Date other than:

(i) shares issued as a dividend or distribution with respect to the Series Preferred;

(ii) shares issued to officers, directors or employees of, or consultants to, the Corporation pursuant to stock option or stock purchase plans or agreements on terms approved by the Board of Directors, but not exceeding 7,460,460 shares of Common Stock (net of any repurchases of such shares) plus the portion of the 2,475,961 shares that are subject to outstanding options on the Filing Date that thereafter are cancelled or expire pursuant to their terms, subject to adjustment for all combinations, consolidations, subdivisions, stock splits and the like after the Filing Date;

(iii) shares of capital stock or warrants for the purchase thereof issued in connection with (1) a business partnership or other strategic business relationship including but not limited to the acquisition by the Corporation of another business entity or majority ownership therein, (2) in connection with a strategic investment the purpose of which is not capital raising, or (3) the acquisition of technology or intellectual property; *provided*, that any such transaction is approved by a majority of those members of the Board of Directors elected by the holders of Series Preferred (collectively, the **"Preferred Directors"**);

(iv) shares issued in connection with equipment leasing, real estate, bank financing or similar transactions approved by a majority of the Preferred Directors;

(v) shares issued to vendors or customers as approved by a majority of the Preferred Directors;

(vi) shares issued upon conversion of the Series Preferred;

(vii) shares issued in a Qualified Public Offering;

(viii) shares issued pursuant to outstanding options, warrants, notes, or other rights to acquire securities of the Corporation as of the Issue Date; and

(xi) shares issued on terms approved by the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding shares of Series B-1 Preferred, voting together as a separate class.

(3) *Deemed Issuance of Common Stock.*

(a) If the Corporation (i) grants any rights or options to subscribe for, purchase, or otherwise acquire shares of Common Stock, or (ii) issues or sells any security convertible into, or exchangeable for, shares of Common Stock, then, in each case, such granting, issue or sale shall be considered to be an issue or sale for cash of the maximum number of shares of Common Stock issuable on exercise, conversion or exchange at the price per share determined under this Section 4(d)(iv)(3), and the Series B-1 Conversion Price shall be subject to adjustment as provided in this Section 4(d)(iv)(3) to reflect (on the basis of that determination) the issue or sale. No further adjustment of the Series B-1 Conversion Price shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such rights or options or the conversion or exchange of any such convertible securities. The price per share of Common Stock issuable on the exercise of such rights or options or the conversion or exchange of the securities shall be determined by dividing the total amount, if any, received or receivable by the Corporation as consideration for the granting of the rights or options or the issue or sale of the convertible or exchangeable securities, plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise or conversion of the securities, by the maximum number of shares of Common Stock issuable on the exercise, conversion or exchange.

(b) Upon the redemption or repurchase of any such securities or the expiration or termination of the right to convert into, exchange for, or exercise with respect to, Common Stock, the Series B-1 Conversion Price shall be readjusted to such price as would have been obtained had the adjustment made upon their issuance been made upon the basis of the issuance of only the number of such securities as were actually converted into, exchanged for, or exercised with respect to, Common Stock. If the purchase price, conversion rate or exchange rate provided for in any such security changes at any time, then, upon such change becoming effective, the Series B-1 Conversion Price then in effect shall be readjusted forthwith to such price as would have been obtained had the adjustment made upon the issuance of such securities been made upon the basis of (i) the issuance of only the number of shares of Common Stock theretofore actually delivered upon the conversion, exchange or exercise of such securities, and the total consideration received therefor, and (ii) the granting or issuance, at the time of such change, of any such securities then still outstanding for the consideration, if any, received by the Corporation therefor and to be received on the basis of such changed price or rate.

(4) **Determination of Consideration.** For the purpose of making any adjustment in the Series B-1 Conversion Price as provided above, the consideration received by the Corporation for any issue or sale of Common Stock shall be computed:

(a) to the extent it consists of cash, as the amount of cash received by the Corporation before deduction of any offering expenses payable by the Corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with such issue or sale;

(b) to the extent it consists of property other than cash, at the fair market value of that property as determined in accordance with Section 2(c) of this Article 5; and

(c) if Common Stock is issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Common Stock.

(e) **Special Mandatory Conversions.**

(i) For purposes of this Section 4(e), the following definitions shall apply:

(1) **“Bridge Closing,” “Notes” and “Series B-1 Notice”** shall have the meanings set forth in the Note and Series B-1 Purchase Agreement (as defined below).

(2) An **“Affiliate”** of any Eligible Holder or Purchaser shall mean (1) any partner or retired partner of such Eligible Holder or Purchaser which is a partnership; (2) any member or former member of such Eligible Holder or Purchaser which is a limited liability company; (3) any family member or trust for the benefit of an individual Eligible Holder or Purchaser or (4) any affiliated (as defined under the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder) venture capital fund of such Eligible Holder or Purchaser.

(3) An **“Eligible Holder”** shall mean any holder of Junior Series Preferred as of the date of the mailing of the Bridge Notice.

(4) A Non-Participating Holder’s **“Initial Common Conversion Amount”** shall mean the number of shares of Common Stock equal to the product of (A) the number of shares of Junior Series Preferred held by such Non-Participating Holder multiplied by (B) the quotient of (1) 10,010, divided by (2) the aggregate number of shares of Junior Series Preferred held by all Non-Participating Holders.

(5) A **“Non-Participating Holder”** shall mean any Eligible Holder that is not a Participating Holder.

(6) A **"Participating Holder"** shall mean an Eligible Holder that (1) provides the Company with written notice of its investment intent (directly or through an Affiliate) as required pursuant to the Bridge Notice (as defined below), (2) together with the Affiliates of such Eligible Holder, purchases at least fifty percent (50%) of such Eligible Holder's and Affiliates' aggregate Pay to Play Pro Rata Share in the Bridge Closing and (3) at the time of the Bridge Closing, contractually commits, by executing the Note and Series B-1 Purchase Agreement, to purchase at least fifty percent (50%) of such Eligible Holder's and Affiliates' aggregate Pay to Play Pro Rata Share in the Series B-1 Closing.

(7) An Eligible Holder's **"Pay to Play Pro Rata Share"** shall mean the dollar amount equal to \$8,000,000 multiplied by the quotient of (X) the sum of (A) (1) the Series A/B/C Adjustment multiplied by (2) such Eligible Holder's Series A/B/C Liquidation Preference, plus (B) such Eligible Holder's Series D Liquidation Preference, divided by (Y) \$14,999,990.

(8) A Participating Holder's **"Series A-1 Preferred Conversion Amount"** shall mean a number of shares of Series A-1 Preferred equal to the sum of (X) the product of (A) the number of shares of Series A Preferred held by such Participating Holder multiplied by (B) the quotient of (1) 900,078 divided by (2) the aggregate number of shares of Series A Preferred held by all Participating Holders, plus (Y) the product of (A) the number of shares of Series B Preferred held by such Participating Holder multiplied by (B) the quotient of (1) 2,184,683 divided by (2) the aggregate number of shares of Series B Preferred held by all Participating Holders, plus (Z) the product of (A) the number of shares of Series C Preferred held by such Participating Holder multiplied by (B) the quotient of (1) 1,915,239 divided by (2) the aggregate number of shares of Series C Preferred held by all Participating Holders.

(9) A Participating Holder's **"Series A-2 Preferred Conversion Amount"** shall mean a number of shares of Series A-2 Preferred equal to the product of (A) the number of shares of Series D Preferred held by such Participating Holder multiplied by (B) the quotient of (1) 9,999,990, divided by (2) the aggregate number of shares of Series D Preferred held by all Participating Holders.

(10) The **"Series A/B/C Adjustment"** shall mean the quotient of (1) \$5,000,000 divided by (2) \$34,329,918.

(11) An Eligible Holder's **"Series A/B/C Liquidation Preference"** shall mean the dollar amount equal to the sum of (A) (1) the aggregate number of outstanding shares of Series A Preferred held by the Eligible Holder and the Affiliates of such Eligible Holder multiplied by (2) \$1.35, plus (B) (1) the aggregate number of outstanding shares of Series B Preferred held by the Eligible Holder and the Affiliates of such Eligible Holder multiplied by (2) \$1.50, plus (C) (1) the aggregate number of outstanding shares of Series C Preferred held by the Eligible Holder and the Affiliates of such Eligible Holder multiplied by (2) \$1.50.

(12) **"Series B-1 Closing"** shall mean the closing on or before January 31, 2010 of the sale and issuance by the Corporation of at least 18,000,007 shares of

Series B-1 Preferred (not including any shares of Series B-1 Preferred issued in such Series B-1 Closing upon the conversion of convertible promissory notes issued under the Note and Series B-1 Purchase Agreement (as defined below)) pursuant to the Note and Series B-1 Preferred Stock Purchase Agreement dated on or about the date hereof (the "*Note and Series B-1 Purchase Agreement*").

(13) An Eligible Holder's "*Series D Liquidation Preference*" shall mean the dollar amount equal to (1) the number of outstanding shares of Series D Preferred held by the Eligible Holder and the Affiliates of such Eligible Holder multiplied by (2) \$1.78.

(14) A Participating Holder's "*Subsequent Common Conversion Amount*" shall mean the number of shares of Common Stock equal to the product of (A) the number of shares of Mezzanine Preferred held by such Participating Holder multiplied by (B) the quotient of (1) 1,000, divided by (2) the aggregate number of shares of Mezzanine Preferred held by all Participating Holders.

(ii) At least four business days prior to the Bridge Closing, the Company shall deliver a written notice (the "*Bridge Notice*") to each Eligible Holder that (1) states the Company's intention to issue Notes in the Bridge Closing and shares of Series B-1 Preferred in the Series B-1 Closing; (2) indicates the principal material terms upon which the Company proposes to issue the Notes (including the anticipated approximate date of the Bridge Closing); (3) specifies such Eligible Holder's Pay to Play Pro Rata Share; and (4) offers such Eligible Holder together with its Affiliates the right to purchase Notes at the Bridge Closing and to contractually commit by executing the Note and Series B-1 Purchase Agreement to purchase shares of Series B-1 Preferred in the Series B-1 Closing. Each Eligible Holder shall, within three business days after the date the Notice is delivered, provide written notice to the Company of the amount of Notes such Eligible Holder together with its Affiliates shall purchase at the Bridge Closing and the amount of Series B-1 Preferred such Eligible Holder together with its Affiliates shall purchase at the Series B-1 Closing.

(iii) All shares of Junior Series Preferred held by Non-Participating Holders and their Affiliates shall automatically and without further action on the part of such Non-Participating Holders be converted, effective as of the opening of business on the first day following the date of the Bridge Closing, into shares of Common Stock equal to the Initial Common Conversion Amount, and all rights of each such holder as a holder of Junior Series Preferred with respect to the shares so automatically converted shall terminate immediately upon such automatic conversion.

(iv) All shares of Series A Preferred, Series B Preferred and Series C Preferred held by Participating Holders and their Affiliates shall automatically and without further action on the part of such Participating Holders be converted, effective as of the opening of business on the first day following the date of the Bridge Closing, into shares of Series A-1 Preferred equal to the Series A-1 Preferred Conversion Amount, and all rights of each such holder as a holder of Series A Preferred, Series B Preferred and Series C Preferred, as applicable, with respect to the shares so automatically converted shall terminate immediately upon such automatic conversion.

(v) All shares of Series D Preferred held by Participating Holders and their Affiliates shall automatically and without further action on the part of such Participating Holders be converted, effective as of the opening of business on the first day following the date of the Bridge Closing, into shares of Series A-2 Preferred equal to the Series A-2 Preferred Conversion Amount, and all rights of each such holder as a holder of Series D Preferred with respect to the shares so automatically converted shall terminate immediately upon such automatic conversion.

(vi) In the event that a Series B-1 Notice is delivered by the Company in accordance with the terms of the Note and Series B-1 Purchase Agreement not less than five business days prior to the proposed date of the Series B-1 Closing, and thereafter any Participating Holder together with the Affiliates of such Participating Holder does not purchase at the Series B-1 Closing at least fifty percent (50%) of such Participating Holder's and Affiliates' aggregate Pay to Play Pro Rata Share (each a "**Breaching Holder**"), then all shares of Series A-1 Preferred and Series A-2 Preferred held by such Breaching Holder and its Affiliates shall automatically and without further action on the part of such Breaching Holder be converted, effective as of the opening of business on the first day following the date of the Series B-1 Closing, into shares of Common Stock equal to the Subsequent Common Conversion Amount, and all rights of such holder as a holder of Series Preferred with respect to the shares so automatically converted shall terminate immediately upon such automatic conversion.

Upon the occurrence of any of the events specified in Sections 4(e)(iii), 4(e)(iv), 4(e)(v) and 4(e)(vi) above, the applicable outstanding shares of Preferred Stock shall be converted automatically and without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock or Preferred Stock, as applicable, issuable upon such conversion unless the certificates evidencing such shares of converted Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of applicable outstanding shares of Preferred Stock, the holders of such converted Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for such converted Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly 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 or Preferred Stock, as applicable, into which the applicable shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of this Article 5.

(f) **No Impairment.** The Corporation shall not, by amendment of its Certificate of Incorporation or through any voluntary liquidation, dissolution, winding up, transfer of assets, consolidation, corporate reorganization, merger or issue or sale of securities, or through 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 4 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 Series Preferred against impairment; *provided that* nothing in this Section 4(f) shall be deemed to prohibit the Corporation from taking any action described in Section 6 below if such action has been approved by the requisite stockholder vote set forth in such Section 6 and by the Board of Directors.

(g) ***Certificate as to Adjustments.*** Upon the occurrence of each adjustment or readjustment of the Series A-1 Conversion Price, Series A-2 Conversion Price or Series B-1 Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request of any holder of Series Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A-1 Conversion Price, Series A-2 Conversion Price or Series B-1 Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such Series Preferred.

(h) ***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 or Series Preferred, 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 or Series Preferred outstanding involving a change in the Common Stock or Series Preferred, respectively; or

(iv) to merge or consolidate with or into any other corporation, entity or person, or sell, lease, or convey all or substantially all its property or business, or to liquidate, dissolve, or wind up; then, in connection with each such event, the Corporation shall send to the holders of the Series Preferred:

(1) at least 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 or Series Preferred shall be entitled thereto) or for determining rights to vote 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 10 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock or Series Preferred shall be entitled to exchange

their Common Stock or Series Preferred for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

Each such written notice shall be delivered personally or via overnight courier, or given by first class mail, postage prepaid, addressed to the holders of the Series Preferred at the address for each such holder as shown on the books of the Corporation.

(i) **Issue Taxes.** The Corporation shall pay any and all issue and other taxes (other than income taxes) that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series Preferred 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.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series Preferred; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series Preferred, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

5. Redemption Rights. The Series Preferred shall not be redeemable at the option of any stockholder.

6. Covenants.

(a) **Mezzanine Preferred.** In addition to any other rights provided herein or by law, so long as at least 1,000,000 shares of Mezzanine Preferred (appropriately adjusted for combinations, consolidations, subdivisions, stock splits and the like after the Filing Date with respect to such shares) remain issued and outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise), without first obtaining the affirmative vote or written consent of the holders of a majority of the then outstanding shares of Mezzanine Preferred, voting together as a single class and single series on an as converted basis:

(i) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation if such action would adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, the Mezzanine Preferred, without adversely altering or changing the preferences, rights, privileges or powers of each other series of Preferred Stock in an equitable manner; or

(ii) increase or decrease the authorized number of shares of Mezzanine Preferred.

(b) *Series Preferred.* In addition to any other rights provided herein or by law, so long as at least 1,000,000 shares of Series Preferred (appropriately adjusted for combinations, consolidations, subdivisions, stock splits and the like after the Issue Date with respect to such shares) remain issued and outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise), without first obtaining the affirmative vote or written consent of the holders of seventy percent (70%) of the then outstanding shares of Series Preferred, voting together as a single class on an as converted basis:

(i) amend or repeal any provision of, or add any provision to, the Corporation's Certificate of Incorporation or Bylaws;

(ii) authorize or issue shares of any class or series of stock or reclassify any shares of capital stock of the Corporation into shares having any right, preference or priority as to dividends or redemption rights, liquidation preferences, conversion rights, or voting rights, superior to or on a parity with any right, preference or priority of the Series Preferred;

(iii) engage in any transaction or series of related transactions constituting a Liquidation Event;

(iv) declare or pay dividends on or make any distributions with respect to the Corporation's Common Stock;

(v) effect any redemption or repurchase of any securities (other than the repurchase of the Corporation's Common Stock from employees, directors, consultants, and advisors at no greater than original cost in connection with the termination of such individuals pursuant to the terms of agreements entered into with such employees, directors, consultants or advisors which were approved by the Board of Directors);

(vi) change the authorized number of members of the Board of Directors; provided, however, that any such change approved by the Board of Directors prior to the Filing Date shall not trigger this Section 6(b)(vi);

(vii) increase or decrease the authorized number of shares of Common Stock or Series Preferred Stock;

(viii) incur new indebtedness in excess of \$1,000,000, (excluding the (1) issuance of asset-backed indebtedness incurred in connection with transactions approved by the Board of Directors; (2) issuance of promissory notes as consideration in connection with acquisitions approved by the Board of Directors, provided that such promissory notes are an unsecured obligations of the Corporation, (3) incurrence of capital lease obligations in the ordinary course of business, or (4) incurrence of indebtedness in connection with vendor or supplier financing);

(ix) create any new stock option or stock purchase plan, or issue stock options or other rights to acquire Common Stock outside of any existing stock option or stock purchase plan, including the Corporation's 2003 Amended and Restated Equity Incentive Plan (the "*Plan*") to any officer, director, employee of or consultant to the Corporation; and

(x) allow the aggregate number of outstanding stock awards under the Plan at any time to exceed twenty percent (20%) of the total then outstanding shares of the Company on a fully diluted and as-converted basis.

7. Residual Rights.

All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

ARTICLE 6. BOARD OF DIRECTORS

In furtherance and not in limitation of the powers conferred by Delaware law:

1. Bylaws. Subject to Section 6 of Article 5, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

2. Election of Directors. The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE 7. DISSOLUTION

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE 8. LIMITATION OF DIRECTORS' LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law of the State of Delaware is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the Corporation and its stockholders through bylaw provisions or through agreements with the agents, or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or times that the Corporation is subject to Section 2115(b) of the CGCL, to the limits on such excess indemnification set forth in Section 204 of the CGCL.

Any repeal or modification of this Article 8 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.